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**Mary Fallin, Governor**  
**Dave Lopez,**  
**Secretary of State**  
**Peggy Coe, Editor-in-Chief**

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Oklahoma <b>PEANUT</b> Commission . . . . .	520	Oklahoma <b>TURNPIKE</b> Authority ( <i>Name changed to Oklahoma</i> <b>TRANSPORTATION</b> Authority <i>11-1-99 - no rules enacted in this</i> <i>Title - See</i> Title 731) . . . . .	745
Oklahoma State <b>PENSION</b> Commission . . . . .	525	Oklahoma <b>UNIFORM</b> Building Code Commission . . . . .	748
State Board of Examiners of <b>PERFUSIONISTS</b> . . . . .	527	Board of Trustees for the <b>UNIVERSITY</b> Center at Tulsa ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	750
Office of <b>PERSONNEL</b> Management ( <i>consolidated under</i> Office of Management and Enterprise Services <i>8-26-11 - See Title</i> <i>260</i> ) . . . . .	530	<b>UNIVERSITY</b> Hospitals Authority . . . . .	752
Board of Commercial <b>PET</b> Breeders ( <i>abolished 7-1-12 - See Title</i> <i>35</i> ) . . . . .	532	<b>UNIVERSITY</b> Hospitals Trust . . . . .	753
Oklahoma State Board of <b>PHARMACY</b> . . . . .	535	Board of Regents of the <b>UNIVERSITY</b> of Oklahoma ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	755
<b>PHYSICIAN</b> Manpower Training Commission . . . . .	540	Board of Regents of the <b>UNIVERSITY</b> of Science and Arts of Oklahoma ( <i>exempted 11-1-98</i> ) . . . . .	760
Board of <b>PODIATRIC</b> Medical Examiners . . . . .	545	Oklahoma <b>USED</b> Motor Vehicle and Parts Commission . . . . .	765
Oklahoma <b>POLICE</b> Pension and Retirement System . . . . .	550	Oklahoma Department of <b>VETERANS</b> Affairs . . . . .	770
State Department of <b>POLLUTION</b> Control ( <i>abolished 1-1-93</i> ) . . . . .	555	Board of <b>VETERINARY</b> Medical Examiners . . . . .	775
<b>POLYGRAPH</b> Examiners Board . . . . .	560	Statewide <b>VIRTUAL</b> Charter School Board . . . . .	777
Oklahoma Board of <b>PRIVATE</b> Vocational Schools . . . . .	565		
State Board for <b>PROPERTY</b> and Casualty Rates ( <i>abolished 7-1-06; see also Title 365</i> ) . . . . .	570		
State Board of Examiners of <b>PSYCHOLOGISTS</b> . . . . .	575		
Department of <b>CENTRAL</b> Services (Formerly: Office of <b>PUBLIC</b> Affairs; <i>consolidated under</i> Office of Management and Enterprise Services <i>8-26-11 - See Title 260</i> ) . . . . .	580		

<b>Agency</b>	<b>Title</b>	<b>Agency</b>	<b>Title</b>
Oklahoma Department of <b>CAREER</b> and Technology Education (Formerly: Oklahoma Department of <b>VOCATIONAL</b> and Technical Education) . . . . .	780	Oklahoma <b>WHEAT</b> Commission . . . . .	795
Oklahoma <b>WATER</b> Resources Board . . . . .	785	Department of <b>WILDLIFE</b> Conservation . . . . .	800
Board of Regents of <b>WESTERN</b> Oklahoma State College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	790	<b>WILL</b> Rogers and J.M. Davis Memorials Commission . . . . .	805
		Oklahoma <b>WORKERS'</b> Compensation Commission . . . . .	810



# Notices of Rulemaking Intent

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

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

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

## **TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #17-718]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Organization, Operations, Procedures and Forms

45:1-3-1. Origin of the Commission [AMENDED]

45:1-3-3. Availability of records and forms [AMENDED]

45:1-3-4. Manner of obtaining information [AMENDED]

Subchapter 5. Hearings Before the Commission

45:1-5-1. Hearings before the Commission [AMENDED]

Subchapter 7. Director of the Commission

45:1-7-1. Duties and responsibilities [AMENDED]

45:1-7-2. Authority to conduct hearings [AMENDED]

45:1-7-4. Authority to require reports from licensees [AMENDED]

### **SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 1, Subchapter 3, Section 45:1-3-1, Section 45:1-3-3, and Section 45:1-3-4 serve to update statutory citations contained therein as well as the official address of the Commission. The proposed permanent additions to Chapter 1, Subchapter 5, Section 45:1-5-1 clarify who may give an opening statement during an administrative hearing on behalf of the Commission. The

proposed permanent additions to Chapter 1, Subchapter 7, Section 45:1-7-1, Section 45:1-7-2, Section 45:1-7-3, and Section 45:1-7-4 update statutory citations contained therein as well as modify the names of various license types changed by statute.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov).

### **PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

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

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov). Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

# Notices of Rulemaking Intent

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## **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

## **CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517  
email: Kathy.Sharp@able.ok.gov

*[OAR Docket #17-718; filed 10-24-17]*

## **TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION CHAPTER 10. PROVISIONS AND PENALTIES APPLICABLE TO ALL LICENSEES**

*[OAR Docket #17-719]*

## **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

## **PROPOSED RULES:**

- Subchapter 3. Provisions Applicable to all Licensees
- 45:10-3-4. Notice of intent to apply for license [AMENDED]
  - 45:10-3-5. Application filing period [AMENDED]
  - 45:10-3-7. Employee, Agent or Manufacturer's Agent license [AMENDED]
  - 45:10-3-12. Restriction on delivery of alcoholic beverages [AMENDED]
  - 45:10-3-13. Payment before delivery by Wholesaler [AMENDED]
  - 45:10-3-14. Wholesaler invoice requirement [AMENDED]
  - 45:10-3-15. Returning merchandise delivered in error [AMENDED]
  - 45:10-3-16. Insufficient fund checks prohibited [AMENDED]
  - 45:10-3-17. Payment of insufficient fund checks [AMENDED]
  - 45:10-3-18. Notice of dishonored check [AMENDED]
  - 45:10-3-19. Requirement for deposit of checks [AMENDED]
  - 45:10-3-20. Holding of check prohibited [AMENDED]
  - 45:10-3-21. Postdated checks prohibited [AMENDED]
  - 45:10-3-22. Wholesaler city bank deposit requirement [AMENDED]
  - 45:10-3-23. Tie-in sales prohibited [AMENDED]
  - 45:10-3-24. Acceptance of certain inducements prohibited [AMENDED]
  - 45:10-3-25. Offering of certain inducements prohibited [AMENDED]

- 45:10-3-26. Prohibited transactions [AMENDED]
- 45:10-3-27. Storage in bonded warehouse [AMENDED]
- 45:10-3-28. Refunds for erroneous or excessive collections [AMENDED]
- 45:10-3-30. Transfer of stock by former licensee [AMENDED]
- 45:10-3-31. Designated bar areas [AMENDED]
- 45:10-3-32. Prohibited locations [AMENDED]
- Subchapter 5. Penalties
- 45:10-5-3. Penalty schedules [AMENDED]

## **SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-4 and Section 45:10-3-5 are designed to include newly created licenses among those required to file a notice of intent for an alcohol license, as well as the filing period for such notice. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-7 modify license names, and add Retail beer, Retail Wine, and Beer and Wine licenses to the list of those license types required to license its employees. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:0-3-12 modify the days on which alcohol may be received by a licensee from a wholesaler to accurately reflect the modifications contained in Senate Bill 646 of the 2017 legislative session. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-13 and Section 45:10-3-14 add retail beer, retail wine, and beer and wine licensees to the list of those required to make payment before the delivery of alcoholic beverages may take place and maintain a wholesale invoice for the beverages at the licensed premises. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-15 add newly created retail licensees to those whom a wholesaler may receive returned merchandise delivered through mistake or error. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-16 and Section 45:10-3-17 add newly created licensees and changes the license names pursuant to statute concerning those licensees prohibited from paying for alcoholic beverages with insufficient fund checks,

and procedures for making proper payment on such a check. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-18 also change the license names pursuant to statute required to give notice of an insufficient check to the ABLE Commission.

The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-19 change the names of licenses which must deposit checks within two banking days. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-20 change the names of licenses that are prohibited from holding checks. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-21 change the name of licenses prohibited from writing and accepting postdated checks. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-22 also change the name of licenses within the rule requiring a Wine and Spirits Wholesaler to deposit checks at a local bank. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-23, in order to be consistent with statute, update the name of the licenses prohibited from engaging in tie-in sales. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-24 and Section 45:10-3-25 update the name of licenses prohibited from offering and accepting inducements to be consistent with the names of licenses in statute. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-26 update the name of licenses prohibited from obtaining alcoholic beverages by means other than a bona fide sale to be consistent with statute. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-27 update the names of licenses required to store alcohol in a bonded warehouse. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-28 change a statutory citation. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-30 update the names of licenses permitted to transfer a stock of alcoholic beverages. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-31 remove the section specific definition of an alcoholic beverage, in order to comport with the definition contained in Title 37A. The proposed permanent additions to Chapter 10, Subchapter 3, Section 45:10-3-32 add a beer and wine license to those prohibited from being located within 300 feet of a church or school, as required by statute. Additionally, the proposed permanent additions change the amount of time an entity claiming a purpose other than the sale of alcohol may operate in order to demonstrate such a purpose from 60 days to 90 days, in order to accurately reflect the directive given in Title 37A.

The proposed permanent additions to Chapter 10, Subchapter 5, Section 45:10-5-3 serve to update the statutory citation contained therein. The proposed permanent additions to Chapter 10, Subchapter 5, Appendix A and Appendix B serve to create penalties for newly enacted major and minor violations of new rules within Title 45 of the Oklahoma Administrative Code, as well as correct statutory citations for all major and minor violations. While only statutory citations were changed for currently cited violations, penalties

were created and included in both appendixes for rules not previously contained in Title 45.

**AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov).

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

**COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov). Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

**CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517

# Notices of Rulemaking Intent

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email: Kathy.Sharp@able.ok.gov

[OAR Docket #17-719; filed 10-24-17]

## **TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION CHAPTER 15. EMPLOYEE LICENSES, TRAINING, CERTIFICATION**

[OAR Docket #17-720]

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. Employee License [NEW]

45:15-1-1. Training Required [NEW]

Subchapter 3. Certified Trainers [NEW]

45:15-3-1. Application for Certification of Program [NEW]

45:15-3-2. Minimum Standards of Curriculum [NEW]

45:15-3-3. Additional Requirements for Online Training Programs [NEW]

45:15-3-4. Requirements of Certified Trainers [NEW]

### **SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 15, Subchapter 1, Section 45:15-1-1 require all applicants for an original employee license to successfully complete alcohol server training conducted by a Commission approved trainer prior to being granted a license. The proposed permanent additions also require such an applicant to provide proof the applicant completed training to the Commission prior to the issuance of license, as required by 37A O.S. §2-121. The proposed permanent additions to Chapter 15, Subchapter 3, Section 45:15-3-1 seek to set out application procedures for those individuals or entities seeking to become an approved employee trainer pursuant to 37A O.S. §2-121. The proposed permanent changes require written application to the Commission, and further require the Commission to hear and consider such application within 120 days. The proposed permanent additions to Chapter 15, Subchapter 3, Section

45:15-3-2 provide a minimum set of curricula a certified trainer applicant must teach in order to be approved as a trainer by the Commission. Such minimum curriculum includes fake identification cards, selling to minors and intoxicants, and the rights of a licensee to refuse service. The proposed permanent additions to Chapter 15, Subchapter 3, Section 45:15-3-3 provide additional guidelines to those trainer applicants seeking approval of a course in an online form, requiring a written statement of such intent, and explanation of security features, if any, built into the online program. The proposed permanent additions to Chapter 15, Subchapter 3, Section 45:15-3-4 require all Commission approved certified trainers to submit a list of successful program participants within 3 business days of the completion of the training program.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email Kathy.Sharp@able.ok.gov.

### **PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

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

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to Kathy.Sharp@able.ok.gov. Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

**CONTACT PERSON:**

Kathy Sharp  
 Alcoholic Beverage Laws Enforcement Commission  
 3812 N. Santa Fe  
 Suite 200  
 Oklahoma City, Oklahoma 73118  
 (405) 521-3484  
 Toll Free: (866) 894-3517  
 email: Kathy.Sharp@able.ok.gov

*[OAR Docket #17-720; filed 10-24-17]*

**TITLE 45. ALCOHOLIC BEVERAGE LAWS  
 ENFORCEMENT COMMISSION  
 CHAPTER 20. ~~RETAIL PACKAGES~~ SPIRITS  
 STORES, MIXED BEVERAGE, CATERERS,  
 SPECIAL EVENTS AND BOTTLE CLUBS**

*[OAR Docket #17-726]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
- 45:20-1-1. Purpose [AMENDED]
- Subchapter 3. ~~Retail/Package~~ Retail Spirit Stores
- 45:20-3-1. Restriction on location of licensed premises [AMENDED]
- 45:20-3-2. Connected living quarters prohibited [AMENDED]
- 45:20-3-3. Certificates of Compliance [AMENDED]
- 45:20-3-4. Restriction on sales and deliveries [AMENDED]
- 45:20-3-5. Prohibited transactions [AMENDED]
- 45:20-3-6. Holding for delivery when sales illegal prohibited [AMENDED]
- 45:20-3-7. Records of expenditures [AMENDED]
- 45:20-3-8. Other business prohibited [AMENDED]
- 45:20-3-9. Percentage leases [AMENDED]
- 45:20-3-10. Gambling, gambling devices and games prohibited [AMENDED]
- 45:20-3-11. Storage in licensed premises [AMENDED]
- 45:20-3-12. Opened containers on licensed premises prohibited [AMENDED]
- 45:20-3-13. Restriction on adjacent business [AMENDED]
- 45:20-3-14. Extension of credit by ~~Retailer~~ Retail Spirit License [AMENDED]
- 45:20-3-15. Beer keg sales records and identification tags [AMENDED]
- Subchapter 5. Mixed Beverage, Caterer, Special Event, Additional Hours
- 45:20-5-6. Payment Requirements [AMENDED]

- 45:20-5-7. Invalidation of identification stamp [REVOKED]
- 45:20-5-8. Hours for pick-up at warehouses [AMENDED]
- 45:20-5-9. Records of expenditures [AMENDED]
- Subchapter 9. Retail Beer Licensees [NEW]
- 45:20-9-1. Restriction on certain sales [NEW]
- 45:20-9-2. Acceptance of alcohol at retail location only [NEW]
- 45:20-9-3. Sale of other alcoholic beverages prohibited [NEW]
- 45:20-9-4. Employees to be licensed [NEW]
- 45:20-9-5. Necessity to qualify as a retailer [NEW]
- Subchapter 11. Retail Wine Licensees [NEW]
- 45:20-11-1. Restriction on certain sales [NEW]
- 45:20-11-2. Acceptance of alcohol at retail location only [NEW]
- 45:20-11-3. Sale of other alcoholic beverages prohibited [NEW]
- 45:20-11-4. Employees to be licensed [NEW]
- 45:20-11-5. Necessity to quality as a retailer [NEW]

**SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 20, Subchapter 1, Section 45:20-1-1 update license names in order to accurately reflect the statutory license name changes. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-1 also update license names to reflect the statutory name changes. Additionally, this Section changes the hours of operation permitted by a retail spirit license holder as a result of Senate Bill 411 of the 2017 legislative session. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-2, Section 45:20-3-3, Section 45:20-3-4, Section 45:20-3-5, and Section 45:20-3-6 all serve to correct the names of licenses to accurately reflect the names given to those licenses by statute. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-7 correct the names of licenses to accurately reflect the names given to those licenses by statute, as well as update the statutory cite. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-8 and Section 45:20-3-9 are intended to

## Notices of Rulemaking Intent

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correct the name of a retail spirits licensee as provided for in statute. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-10 seek to make clear that the prohibition from gambling, gambling devices and games in a retail spirit store does not limit such a licensee's ability to sell lottery tickets or scratch off tickets, as allowed by 37A O.S. §2-156. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-11, Section 45:20-3-12, and Section 45:20-3-13 serves to update the names of licenses as denoted by statute. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-14 correct the names of licenses, as well as add a debit card or other similar product to acceptable forms of payment a retail spirit licensee may accept. The purpose of this particular addition is to modernize acceptable forms of payment as those have changed since the rule was created. The proposed permanent additions to Chapter 20, Subchapter 3, Section 45:20-3-15 correct the name of licenses subject to beer keg sales record requirements to comport with the statute.

The proposed permanent additions to Chapter 20, Subchapter 5, Section 45:20-5-6 serve to update the names of licenses subject to certain payment requirements in order to conform to the statute. The proposed permanent additions to Chapter 20, Subchapter 5, Section 45:20-5-7 remove the entirety of the provision concerning tax stamps, due to the repeal of 37 O.S. §583 in 2001. The proposed permanent additions to Chapter 20, Subchapter 5, Section 45:20-5-8 update the names of licenses for purposes of hours authorized to pick-up alcoholic beverages from warehouses. The proposed permanent additions to Chapter 20, Subchapter 5, Section 45:20-5-9 modify the statutory citation contained therein.

The proposed permanent additions to Chapter 20, Subchapter 9, Section 45:20-9-1 reflect the restriction contained in 37A O.S. §2-109 prohibiting Retail Beer licensees from selling beer in excess of 8.99% alcohol by volume. The proposed permanent additions to Chapter 20, Subchapter 9, Section 45:20-9-2 are intended to ensure the delivery of alcoholic beverages to Retail Beer licensees is completed by a licensed Beer Distributor directly to the retail location, and not a centralized distribution point owned and operated by the retailer. The proposed permanent additions to Chapter 20, Subchapter 9, Section 45:20-9-3 prohibit a Retail Beer licensee from selling any other form of alcoholic beverage, unless the licensee also holds a Retail Wine license. The proposed permanent additions to Chapter 20, Subchapter 9, Section 45:20-9-4 require all employees of a Retail Beer licensee engaging in the sale of alcohol to hold an employee license. The proposed permanent additions to Chapter 20, Subchapter 9, Section 45:20-9-5 require Retail Beer licensees to qualify as a retailer, as that term is defined in 37A O.S. §1-103.

The proposed permanent additions to Chapter 20, Subchapter 11, Section 45:20-11-1 restrict a Retail Wine licensee from selling wine in excess of 14.99% alcohol by volume, reflecting the restrictions contained in 37A O.S. §2-109. The proposed permanent additions to Chapter 20,

Subchapter 11, Section 45:20-11-2 are intended to ensure the delivery of alcoholic beverages to Retail Wine licensees is completed by a licensed Wine and Spirits Wholesaler directly to the retail location, and not a centralized distribution point owned and operated by the retailer. The proposed permanent additions to Chapter 20, Subchapter 11, Section 45:20-11-3 prohibit a Retail Wine licensee from selling any other form of alcoholic beverage, unless the licensee also holds a Retail Beer license. The proposed permanent additions to Chapter 20, Subchapter 11, Section 45:20-11-4 requires all employees of a Retail Wine licensee engaging in the sale of alcohol to hold an employee license. The proposed permanent additions to Chapter 20, Subchapter 11, Section 45:20-11-5 require Retail Wine licensees to qualify as a retailer, as that term is defined in 37A O.S. §1-103.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov).

### **PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

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

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov). Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

**CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517  
email: Kathy.Sharp@able.ok.gov

*[OAR Docket #17-726; filed 10-24-17]*

**TITLE 45. ALCOHOLIC BEVERAGE LAWS  
ENFORCEMENT COMMISSION  
CHAPTER 25. WINEMAKERS,  
SELF-DISTRIBUTION, DIRECT SHIPMENT**

*[OAR Docket #17-721]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. Winery Premises, Festivals, and Tradeshows [NEW]
  - 45:25-1-1. Samples and Sales on Winery Premises [NEW]
  - 45:25-1-2. Festivals Defined [NEW]
  - 45:25-1-3. Tradeshows Defined [NEW]
  - 45:25-1-4. Extension of Premises [NEW]
  - 45:25-1-5. Event Schedule Required [NEW]
  - 45:25-1-6. Separate Premises Required [NEW]
- Subchapter 3. Self-Distribution License [NEW]
  - 45:25-3-1. License Required [NEW]
  - 45:25-3-2. Sales to be on Same Price Basis [NEW]
  - 45:25-3-3. Price Posting Procedure [NEW]
  - 45:25-3-4. Record of Sales [NEW]
  - 45:25-3-5. Pooled Transportation Prohibited [NEW]
- Subchapter 5. Direct Shipment of Wine [NEW]
  - 45:25-5-1. License Required [NEW]
  - 45:25-5-2. Limited Amount to be Shipped [NEW]
  - 45:25-5-3. Label, Signature, and other Shipping Requirements [NEW]
  - 45:25-5-4. Reporting Required [NEW]

**SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed

rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 25, Subchapter 1, Section 45:25-1-1 require all sales and samples of wine by the glass at a licensed winery to be completed within a designated tasting area, as required by 37A O.S. §2-104. The proposed permanent additions to Chapter 25, Subchapter 1, Section 45:25-1-2 provide a definition of a festival, as the term is undefined in Title 37A. The proposed permanent additions to Chapter 25, Subchapter 1, Section 45:25-1-3 provides a definition of tradeshow, as the term is defined in Title 37A. The proposed permanent additions in Chapter 25, Subchapter 1, Section 45:25-1-4 seek to regulate licensed wineries when attending festivals and tradeshows off their licensed premises by creating a means of extending the licensed premises temporarily at such an event. A designated tasting area, as required at the winery premises, would be required at a festival or tradeshow, and also requires the licensee to post signs at the entrance of the tasting area stating "No persons under 21 years of age permitted in this area", also known as Type II signs. The proposed permanent additions to Chapter 25, Subchapter 1, Section 45:25-1-5 seek to establish a means in which a licensed winery shall notify the Commission of festivals and tradeshows it plans to attend for any given month. The proposed permanent additions to Chapter 25, Subchapter 1, Section 45:25-1-6 prohibit a licensed winemaker from selling its product on the premise of another licensed winemaker at a festival or tradeshow.

The proposed permanent additions to Chapter 25, Subchapter 3, Section 45:25-3-1 require a self-distribution license for those licensed wineries electing to self-distribute, pursuant to 37A O.S. §2-105. The proposed permanent additions to Chapter 25, Subchapter 3, Section 45:25-3-2 reflect the requirement of a self-distribution licensee to sell on the same price basis without discrimination, contained in 37A O.S. §2-105. The proposed permanent additions to Chapter 25, Subchapter 3, Section 45:25-3-3 provide a price posting procedure for products being self-distributed in order to ensure the products are sold on the same price basis without discrimination. The proposed permanent additions to Chapter 25, Subchapter 3, Section 45:25-3-4 provide records of sales keeping requirements for those licensed self-distributing wineries similar to those required of licensed wholesalers. The proposed permanent additions to Chapter 25, Subchapter 3, Section 45:25-3-5 prohibit self-distributing wineries from pooling resources for the purposes of distribution.

The proposed permanent additions to Chapter 25, Subchapter 5, Section 45:25-5-1 requires the obtainment of a direct shippers permit for wineries within or without the State which desire to directly ship to consumers within the State.

## Notices of Rulemaking Intent

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The proposed permanent additions to Chapter 25, Subchapter 5, Section 45:25-5-2 seek to limit the amount of wine any one winery may ship to an individual per year, pursuant to 37A O.S. §3-106. The proposed permanent additions to Chapter 25, Subchapter 5, Section 45:25-5-3 provide for additional labeling requirements on packages of wine being directly shipped to Oklahoma consumers. The proposed permanent additions to Chapter 25, Subchapter 5, Section 45:25-5-4 provide for annual reporting of the amount of wine directly shipped by a winery, pursuant to 37A O.S. §3-106.

### AUTHORITY:

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov).

### PUBLIC HEARING:

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### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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### CONTACT PERSON:

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*[OAR Docket #17-721; filed 10-24-17]*

## TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION CHAPTER 30. MANUFACTURERS, WINE AND SPIRIT WHOLESALERS, BREWERS, NONRESIDENT SELLERS AND CLASS B WHOLESALERS/BEER DISTRIBUTORS

*[OAR Docket #17-722]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

- Subchapter 1. General Provisions
- 45:30-1-1. Purpose [AMENDED]
- 45:30-1-2. Definitions [AMENDED]
- Subchapter 3. Manufacturers and Wine and Spirits Wholesalers
- 45:30-3-1. Certain Manufacturer discrimination prohibited [AMENDED]
- 45:30-3-2. Manufacturer's brand name label registration [AMENDED]
- 45:30-3-3. Manufacturer's price list [AMENDED]
- 45:30-3-4. Products in Short Supply [AMENDED]
- 45:30-3-5. Allocation plan for non-designated products in short supply [AMENDED]
- 45:30-3-6. Wholesaler discrimination prohibited [AMENDED]
- 45:30-3-7. Wholesaler's price registration [AMENDED]
- 45:30-3-8. Wine and Spirits Wholesaler's price list [AMENDED]
- 45:30-3-9. Wine and Spirits Wholesaler's warehouses [AMENDED]
- 45:30-3-10. Wine and Spirit Wholesaler's inventory requirement [AMENDED]
- 45:30-3-11. Permission to close out dead inventory [AMENDED]
- 45:30-3-12. Wine and Spirits Wholesaler's record of sales [AMENDED]
- 45:30-3-13. Wine and Spirits Wholesaler's record of expenditures [AMENDED]
- 45:30-3-14. Wine and Spirits Wholesaler's separate records requirement [AMENDED]
- 45:30-3-15. Sale or transfer between Wine and Spirits Wholesalers [AMENDED]

- 45:30-3-16. Wine and Spirits Wholesaler's agents [AMENDED]
- 45:30-3-17. Business with suspended Manufacturer prohibited [AMENDED]
- 45:30-3-18. Transportation of alcoholic beverages by licensees [AMENDED]
- Subchapter 5. Brewers, Nonresident Sellers and ~~Class B Wholesalers~~ Beer Distributors
- 45:30-5-1. Brewer discrimination prohibited [REVOKED]
- 45:30-5-2. Brewer's brand name label registration [AMENDED]
- 45:30-5-3. Brewer's price list [REVOKED]
- 45:30-5-4. Products in short supply [REVOKED]
- 45:30-5-5. Allocation plan for products in short supply [REVOKED]
- 45:30-5-6. ~~Class B Wholesaler~~ Beer Distributor discrimination prohibited [AMENDED]
- 45:30-5-7. Class B Wholesaler's price registration [REVOKED]
- 45:30-5-8. Class B Wholesaler's price list [REVOKED]
- 45:30-5-9. ~~Class B Wholesaler's~~ Beer Distributor's record of sales [AMENDED]
- 45:30-5-10. ~~Class B Wholesaler's~~ Beer Distributor's record of expenditures [AMENDED]
- 45:30-5-11. ~~Class B Wholesaler's~~ Beer Distributor's separate records requirement [AMENDED]
- 45:30-5-12. Sale or transfer between Class B Wholesalers [REVOKED]
- 45:30-5-13. Business with suspended Brewer prohibited [AMENDED]
- 45:30-5-14. Restriction on deliveries [AMENDED]
- 45:30-5-15. ~~Class B Wholesaler's~~ Beer Distributor's vehicle signs [AMENDED]
- 45:30-5-16. Employees and agents must be licensed [AMENDED]
- 45:30-5-17. Container price differences [AMENDED]
- 45:30-5-18. Transportation of alcoholic beverages by licensees [AMENDED]
- 45:30-5-19. Extension of Brewery Premises [NEW]
- 45:30-5-20. Event Schedule Required [NEW]
- 45:30-5-21. Separate Licensed Premises [NEW]
- 45:30-5-22. Procedure for filing agreements [NEW]
- 45:30-5-23. Registration of designated brands [NEW]
- 45:30-5-24. Delivery outside designated territory [NEW]
- 45:30-5-25. Termination of agreement [NEW]

**SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning

tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 30, Subchapter 1, Section 45:30-1-1 update the names of licenses provided for in the Chapter in order to accurately reflect the names given by statute. The proposed permanent additions to Chapter 30, Subchapter 1, Section 45:20-1-2 change the names of licenses to comport with statute. The provision also amends the definition of Beer Distributor providing that such a licensee is no longer restricted to an individual or partnership pursuant to Title 37A.

The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-1 seek to make clear the prohibition of manufacturer discrimination does not apply to those manufacturers designating one wholesaler as provided for in Title 37A. The provision also serves to update the names of licenses to those given in statute. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-2 corrects the name of the Wine and Spirits Wholesaler to conform with statute. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-3 is intended to exclude designating manufacturers from providing the Commission with a price list because a designating manufacturer is only selling to one Wine and Spirits Wholesaler on a contractual basis, thus, a price list is unnecessary. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-4 exclude designating manufacturers from the provision concerning a short supply of product. Because a designating manufacturer is only selling to one Wine and Spirits Wholesaler on a contractual basis, the process in which a manufacturer is to sell a short supply of product is unnecessary. The provision also updates the Wine and Spirits Wholesale license name to conform to statute. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-5 update the name of the Wine and Spirits Wholesaler license, as well as exclude designated product from those required to be allocated. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-6 update licenses names in order to accurately reflect the names given in Title 37A, as well as correct statutory citations contained therein. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-7 serve to update price registration requirements of Wine and Spirits Wholesalers, by a variety of means. The provision excludes designated product from the registration requirement, as well as removes language concerning delivery charges in the event a Wholesaler cannot deliver an item in the top 18 brands, as it will be impossible for all Wine and Spirits Wholesalers to carry the top 18 brands in light of manufacturers' ability to designate one Wholesaler. Further, the provision removes language concerning tax stamps, as Title 37 O.S. §583 was

## Notices of Rulemaking Intent

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repealed in 2001. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-8 update the license names of those required to publish a price list to the retail level. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-9 update license names and statutory citations, as well as make clear that Wine and Spirits Wholesalers are no longer limited to a single warehouse in the State, as a result of Senate Bill 646 of the 2017 legislative session. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-10 completely remove a Wine and Spirit Wholesaler's requirement to have a 15 day supply of the top 18 brands. The proposal is a direct result of Title 37A allowing manufacturers to designate a single Wine and Spirits Wholesaler. The provision also exempts designated Wholesalers and designated product for purposes of discrimination, collusion, and sequential order filling. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-11, Section 45:30-3-12, and Section 45:30-3-13 update the names of licenses permitted to close out dead inventory, required to keep a record of sales, and required to keep a record of expenditures to accurately reflect the names of licenses given by statute. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-14 and Section 45:30-3-15 change the names of licenses required to keep separate records, as well as those allowed to complete a sale or transfer to other wholesales to adequately reflect the name changes provided for in Title 37A. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-16 correct the names of licenses prohibited from employing part time agents in order to accurately reflect the names of those licenses in statute. The proposed permanent additions to Chapter 30, Subchapter 3, Section 45:30-3-17 and Section 45:30-3-18 update the names of licenses prohibited from engaging in business with a suspended manufacturer, as well as those allowed to use a carrier in order to accurately reflect the names of licenses given by statute.

The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-1 completely remove the provision, as it concerns discrimination by a brewer between wholesalers. The structure of beer distribution provided for in Title 37A not only allows for, but mandates brewers designate a distributor for a particular territory as the exclusive distributor of a brand in that territory making this section unnecessary. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-2 modify the names of licenses to accurately reflect those names provided by statute. The changes also seek to clarify that in the event brand labels do not require federal TTB approval, such labels must still be submitted to the Commission as though federal approval was granted. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-3, Section 45:30-5-4, and Section 45:30-5-5 are completely removed. With the major overhaul of beer distribution contained in Title 37A, a brewer's price list, allocation plan, and procedures for products in short supply are no longer required. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-6 modify the names

of licenses as to match the names given by statute, as well as limit the prohibited discrimination by a distributor to within the county so as to accurately reflect Title 37A. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-7 and Section 45:30-5-8 have been removed entirely. In light of the vast modifications to the beer distribution landscape contained in Title 37A, price registration and price lists from distributors are no longer necessary. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-9 and Section 45:30-5-10 and Section 45:30-5-11 are intended to revise license names contained therein to properly reflect the statute. The permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-12 completely remove the provision in its entirety. The structure of beer distribution contained in Title 37A compels brewers and distributors to contract with one another to distribute products within a territory. No other distributor is allowed to sell such products within that territory, and as such, sales between distributors are no longer authorized.

The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-13 updates the names of licenses to accurately reflect the statute. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-14, Section 45:30-5-15, Section 45:30-5-16, Section 45:30-5-17, and Section 45:30-5-18 correct license names to correspond to the names provided for in Title 37A. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-19 are intended to provide clear guidelines for licensed brewers attending tradeshow and festivals for purposes of establishing an extension of their brewery premises. The provision requires signage posted at the booth space prohibiting persons under 21 years of age from entering. Further, the proposed rule allows multiple brewers to combine the extension area so long as they are contiguous. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-20 require brewers to submit a monthly event schedule to the Commission detailing the festivals and tradeshow it intends to attend for the given month. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-21 require brewers attending festivals and tradeshow and thereby extending their licensed premises to remain on their premises and not set up on another brewers extended premises.

The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-22 create a procedure for manufacturers and distributors to submit distribution agreements and territory maps to the Commission. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-23 provide for a procedure for the registration of designated brands with the Commission. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-24 provide for when sales by distributors outside of sales territories are authorized. The proposed permanent additions to Chapter 30, Subchapter 5, Section 45:30-5-25 provide reporting requirements in the event a distribution agreement is terminated by the parties.

**AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

**COMMENT PERIOD:**

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**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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[OAR Docket #17-722; filed 10-24-17]

**TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION  
CHAPTER 35. EVENTS,  
AIRLINE/RAILROAD, HOTEL/MOTEL**

[OAR Docket #17-723]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 3. Public Events [NEW]
  - 45:35-3-1. Application [NEW]
  - 45:35-3-2. License Availability [NEW]
  - 45:35-3-3. Proof of Insurance Required [NEW]
  - 45:35-3-4. Diagram [NEW]
  - 45:35-3-5. Barriers [NEW]
  - 45:35-3-6. Designated Bar Area [NEW]
  - 45:35-3-7. On-Premise Sales Only [NEW]
- Subchapter 5. Charitable Events [NEW]
  - 45:35-5-1. Application [NEW]
  - 45:35-5-2. License Availability [NEW]
  - 45:35-5-3. Donated Alcohol [NEW]
  - 45:35-5-4. Barriers [NEW]
  - 45:35-5-5. Designated Bar Area [NEW]
  - 45:35-5-6. Diagram [NEW]
- Subchapter 7. Airlines and Railroads [NEW]
  - 45:35-7-1. Application Required [NEW]
  - 45:35-7-2. Sales and Storage [NEW]
  - 45:35-7-3. Tax Presumption [NEW]
- Subchapter 9. Hotels and Motels [NEW]
  - 45:35-9-1. License Required [NEW]
  - 45:35-9-2. Mini-Bar Access Restricted [NEW]
  - 45:35-9-3. Licensee to License Employees [NEW]
  - 45:35-9-4. Size of Containers to be sold [NEW]

**SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

## Notices of Rulemaking Intent

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The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-1 provide an application procedure for those authorized to apply for and receive a special event license. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-2 state that a special event license is only available in counties that have approved the sale of alcoholic beverages by the individual drink. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-3 require applicants of a special event license to provide proof of liability insurance. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-4 require a special event license applicant to provide the Commission with a diagram of the area the applicant wishes to have licensed, as well as where alcoholic beverages will be sold. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-5 require a special event licensee holding an event where other open businesses or buildings are within the area, to use barriers or fencing to separate the event premises from the other businesses. This is to ensure alcohol is not brought into or taken out of the special license premises. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-6 are to establish a designated bar area at special events wherein all ages are admitted. Signage stating persons under 21 years of age are not permitted shall be posted where alcoholic beverages are sold and served at the event. The proposed permanent additions to Chapter 35, Subchapter 1, Section 45:35-1-7 provide that special event licensees may only sell alcoholic beverages for on-premise consumption.

The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-1 provide an application procedure for those authorized to apply for and receive a public event license. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-2 state that a public event license is only available in counties that have approved the sale of alcoholic beverages by the individual drink. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-3 require applicants of a public event license to provide proof of liability insurance. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-4 require a public event license applicant to provide the Commission with a diagram of the area the applicant wishes to have licensed, as well as where alcoholic beverages will be sold. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-5 require a public event licensee holding an event where other open businesses or buildings are within the area to use barriers or fencing to separate the event premises from the other businesses. This is to ensure alcohol is not brought into or taken out of the public event licensed premises. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-6 are to establish a designated bar area at public events wherein all ages are admitted. Signage stating persons under 21 years of age are not permitted shall be posted where alcoholic beverages are sold and served at the event. The proposed permanent additions to Chapter 35, Subchapter 3, Section 45:35-3-7 provide that public event

licensees may only sell alcoholic beverages for on-premise consumption.

The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-1 provide an application procedure for those authorized to apply for and receive a charitable event license. The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-2 state that a charitable event license is only available in counties that have approved the sale of alcoholic beverages by the individual drink. The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-3 allow a licensee to purchase alcoholic beverages from wholesalers, retailers, or receive donated alcohol. The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-4 require a charitable event licensee holding an event where other open businesses or buildings are within the area to use barriers or fencing to separate the event premises from the other businesses. This is to ensure alcohol is not brought into or taken out of the charitable event licensed premises. The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-5 are to establish a designated bar area at charitable events wherein all ages are admitted. Signage stating persons under 21 years of age are not permitted shall be posted where alcoholic beverages are sold and served at the event. The proposed permanent additions to Chapter 35, Subchapter 5, Section 45:35-5-6 provide that charitable event licensees must provide a diagram of the licensed premises to the Commission.

The proposed permanent additions to Chapter 35, Subchapter 7, Section 45:35-7-1 reiterate that airlines seeking licensure must first make application and pay the application fee. The permanent additions to Chapter 35, Subchapter 7, Section 45:35-7-2 provide licensees the ability serve beverages in flight over the entire state, and store sealed beverages at the airport. The proposed permanent additions to Chapter 35, Subchapter 7, Section 45:35-7-3 reiterate the statutory assumption that all alcohol purchased by the licensee is for consumption outside the State, and is exempt from excise tax.

The proposed permanent additions to Chapter 35, Subchapter 9, Section 45:35-9-1 provide that hotels and motels seeking to sell alcoholic beverages from a minibar inside their rooms must also hold a mixed beverage license. The proposed permanent additions to Chapter 35, Subchapter 9, Section 45:35-9-2 require access to minibars be restricted by key or card to those over 21 years of age. The proposed permanent additions to Chapter 35, Subchapter 9, Section 45:35-9-3 require hotel and motel employees handling or stocking beverages in minibars to hold an employee license issued by the Commission. The proposed permanent additions to Chapter 35, Subchapter 9, Section 45:35-9-4 restrict the size of alcoholic beverage containers allowed to be sold in minibars to those provided in statute.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email Kathy.Sharp@able.ok.gov.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

**COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to Kathy.Sharp@able.ok.gov. Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

**CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517  
email: Kathy.Sharp@able.ok.gov

*[OAR Docket #17-723; filed 10-24-17]*

**TITLE 45. ALCOHOLIC BEVERAGE LAWS  
ENFORCEMENT COMMISSION  
CHAPTER 40. TRANSPORTATION,  
CONTAINERS AND CHANGE IN STATUS  
AND LOCATION**

*[OAR Docket #17-724]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 3. Transportation, Bonded Carriers and Storage in Transit
  - 45:40-3-1. Transportation by Authorized Carrier [AMENDED]
  - 45:40-3-2. Carrier's Report [AMENDED]
  - 45:40-3-3. Storage of alcoholic beverages in transit [AMENDED]
  - 45:40-3-4. Delivery to licensee's warehouse [AMENDED]
  - 45:40-3-5. Wine and Spirits Wholesaler's vehicle signs [AMENDED]
- Subchapter 5. Containers and Labels
  - 45:40-5-1. Containers [AMENDED]
  - 45:40-5-4. Wine and Spirits Wholesaler's use of private labels prohibited [AMENDED]
- Subchapter 7. Change in Status or Location
  - 45:40-7-1. Change in Location [AMENDED]
  - 45:40-7-2. Sale of entire stock of merchandise [AMENDED]
  - 45:40-7-3. Operation by legal representative [AMENDED]
  - 45:40-7-5. Alterations of licensed premises [AMENDED]

**SUMMARY:**

During the 2016 general election, State Question 792 was passed by a vote of the people, repealing Article 28 of the Oklahoma Constitution and replacing it with Article 28A, effective October 1, 2018. During the 2016 legislative session, Senate Bill 383 was passed and signed into law by Governor Mary Fallin. Senate Bill 383 effectively repeals Title 37 of the Oklahoma Statutes, and replaces it with Title 37A. In addition, Senate Bill 411 and Senate Bill 646 of the 2017 legislative session provide additional changes to Title 37A. All proposed rule changes with the exception of Chapter 60 concerning tobacco are a direct result of the sweeping constitutional and statutory revisions. The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. As such, the proposed permanent rule changes are intended to update Title 45 of the Administrative Code so that it may accurately reflect the State's new alcohol laws.

The proposed permanent additions to Chapter 40, Subchapter 3, Section 45:40-3-1 remove the phrase "light beer" from the provision, as such a distinction is no longer provided for in Title 37A. The provision also serves to update the names of licenses as provided for by statute. The proposed permanent additions to Chapter 40, Subchapter 3, Section 45:40-3-2 update the statutory citation contained therein. The

## Notices of Rulemaking Intent

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proposed permanent additions to Chapter 40, Subchapter 3, Section 45:40-3-3, Section 45:40-3-4, and Section 45:40-3-5 update the names of licenses to reflect those names provided for by statute.

The proposed permanent additions to Chapter 40, Subchapter 5, Section 45:40-5-1 and Section 45:40-5-4 serve to update the names of licenses so as to accurately reflect the names given by statute. The proposed permanent additions to Chapter 40, Subchapter 7, Section 45:40-7-1, Section 45:40-7-2, and Section 45:40-7-3 are intended to update the names of licenses to match the names of licenses provided for in Title 37A. The proposed permanent additions to Chapter 40, Subchapter 7, Section 45:40-7-5 serve to clarify which Commission employee has authority to grant temporary permission to a licensee to alter a licensed premises.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov).

### **PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

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

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

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

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov). Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency's website at <http://www.able.ok.gov>.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

### **CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517  
email: [Kathy.Sharp@able.ok.gov](mailto:Kathy.Sharp@able.ok.gov)

*[OAR Docket #17-724; filed 10-24-17]*

## **TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION CHAPTER 60. TOBACCO**

*[OAR Docket #17-725]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Notification  
45:60-3-3. Procedures for conducting hearings [NEW]

### **SUMMARY:**

The proposed changes to Chapter 60 address the hearing procedures concerning tobacco violations that have been needed for some time. The proposed permanent additions to Chapter 40, Subchapter 3, Section 45:40-3-1 remove the phrase "light beer" from the provision, as such a distinction is no longer provided for in Title 37A. The provision also serves to update the names of licenses as provided for by statute. The proposed permanent additions to Chapter 60, Subchapter 3, Section 45:60-3-3 seek to provide a procedure by which the Commission shall conduct administrative hearings concerning the Prevention of Youth Access to Tobacco Act. While the Commission has long held jurisdiction over the Act, it has previously used hearing procedures provided for in Chapter 10 concerning violations of the Alcoholic Beverage Control Act, or Chapter 50 concerning violations of the Charity Games Act. Because much of the Commission's administrative rules must be overhauled and modified as a result of State Question 792, the Commission believes now is a proper time to provide for a hearing procedure specifically for tobacco violations.

### **AUTHORITY:**

Oklahoma Alcoholic Beverage Control Act, 37A O.S. §1-101 et seq.; and Alcoholic Beverage Laws Enforcement Commission; 37A O.S. §1-107(2).

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on January 7, 2018, at the following address: Alcoholic Beverage Laws Enforcement Commission (ABLE

Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or to: Kathy Sharp at email Kathy.Sharp@able.ok.gov.

**PUBLIC HEARING:**

A public hearing will be held at 10:00 a.m. on January 8, 2018, at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma. A public hearing will be held at 10:00 A.M. on January 10, 2018, at the Kerr Building auditorium, 440 S. Houston Avenue, Tulsa, Oklahoma. Anyone wishing to speak must sign in at the door at least 15 minutes before the meeting is to begin.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The ABLE Commission requests that business entities affected by these proposed rules provide the ABLE Commission, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs, such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, and/or professional services, the business entity anticipates due to compliance with the proposed rules. Business entities may submit this information in writing to Kathy Sharp at the above address, before the close of business on January 7, 2018.

**COPIES OF PROPOSED RULES:**

Copies of the rules may be obtained by contacting Kathy Sharp at Alcoholic Beverage Laws Enforcement Commission (ABLE Commission), 3812 N. Santa Fe, Suite 200, Oklahoma City, Oklahoma 73118, Attention: Kathy Sharp or email to Kathy.Sharp@able.ok.gov. Persons requesting more than one copy of the proposed rules will be charged \$5.00 per copy. The proposed rules may also be viewed on the agency’s website at <http://www.able.ok.gov>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the ABLE Commission at the above address beginning on November 30, 2017.

**CONTACT PERSON:**

Kathy Sharp  
Alcoholic Beverage Laws Enforcement Commission  
3812 N. Santa Fe  
Suite 200  
Oklahoma City, Oklahoma 73118  
(405) 521-3484  
Toll Free: (866) 894-3517  
email: Kathy.Sharp@able.ok.gov

*[OAR Docket #17-725; filed 10-24-17]*

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 1. GENERAL PROVISIONS**

*[OAR Docket #17-727]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Records and Inspections  
240:1-3-9. Release of confidential information to specific government agencies [AMENDED]

**SUMMARY:**

This rule is being amended at subsection (23) to add the Public Defenders' offices as a state agency that can obtain wage and benefit information. The OESC confidentiality statute at 40 O.S. § 4-508 was amended last year to authorize these entities to obtain wage and benefit information.

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §4-302.

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 15, 2017, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or [Gina.Antipov@oesc.state.ok.us](mailto:Gina.Antipov@oesc.state.ok.us).

**PUBLIC HEARING:**

A public hearing will be held at 9:00 a.m. on Monday, December 18, 2017, at the Oklahoma Employment Security Commission, 5<sup>th</sup> Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 15, 2017.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rule may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rule is also available on the OESC website at [https://www.ok.gov/oesc\\_web/documents/2018%20Notice.docx](https://www.ok.gov/oesc_web/documents/2018%20Notice.docx)

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal

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Department at the above address beginning November 15, 2017.

**CONTACT PERSON:**

Gina Antipov, Secretary V, (405) 557-7146,  
Gina.Antipov@oesc.state.ok.us.

*[OAR Docket #17-727; filed 10-24-17]*

**TITLE 240. OKLAHOMA EMPLOYMENT  
SECURITY COMMISSION  
CHAPTER 10. UNEMPLOYMENT  
INSURANCE PROGRAM**

*[OAR Docket #17-728]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Benefits

Part 5. Eligibility

240:10-3-21. Reasonable assurance [AMENDED]

Subchapter 5. Contributions

Part 3. Rates

240:10-5-10. Payment of contributions [AMENDED]

**SUMMARY:**

240:10-3-21—This rule is being extensively revised to set out the requirements for the between terms denial for educational institutions. The rule was written in accordance with the directives of the U.S. Department of Labor as set out in Unemployment Insurance Program Letter 5-17. It defines school contracts and reasonable assurance, and it sets out requirements for educational employers and claimants.

240:10-5-10—This rule is being amended in subsection (b) to define the date of receipt of a payment of contributions when the payment is sent by a private delivery service.

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§4-302 & 3-102.

**COMMENT PERIOD:**

Persons wishing to present their views in writing may do so before 5:00 p.m. on December 15, 2017, at the following address: Gina Antipov, OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152, or Gina.Antipov@oesc.state.ok.us.

**PUBLIC HEARING:**

A public hearing will be held at 9:00 a.m. on Monday, December 18, 2017, at the Oklahoma Employment Security Commission, 5<sup>th</sup> Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 9:05 a.m.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The OESC requests that business entities affected by this proposed rule provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss, or other costs expected to be incurred

by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Gina Antipov, at the above address, before the close of the comment period on December 15, 2017.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rule may be obtained from the OESC Legal Department, 2401 North Lincoln Boulevard, Room 511-6, P.O. Box 53039, Oklahoma City, OK 73152. The proposed rule is also available on the OESC website at [https://www.ok.gov/oesc\\_web/documents/2018%20Notice.docx](https://www.ok.gov/oesc_web/documents/2018%20Notice.docx)

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and may be obtained from the OESC Legal Department at the above address beginning November 15, 2017.

**CONTACT PERSON:**

Gina Antipov, Secretary V, (405) 557-7146,  
Gina.Antipov@oesc.state.ok.us.

*[OAR Docket #17-728; filed 10-24-17]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 2. PROCEDURES OF THE STATE  
DEPARTMENT OF HEALTH**

*[OAR Docket #17-729]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 31. Human Subjects Protection [NEW]

**SUMMARY:**

310:2-31 - The current rules for human subject protection in research describe the boundaries in scope, actions, and authority for the agency's institutional review board and research integrity officer. The current rules are located in the Oklahoma Administrative Code at Title 310, Chapter 10, Human Subjects Protection. The proposal relates to a proposal to revoke Chapter 10. A new Subchapter 31, Human Subjects Protection, will be added under Chapter 2, Procedures of the State Health Department. The effect of this move aligns the procedures to be used for human subject protection within the agency Chapter on procedures and is consistent with other state agencies.

Other changes to the relocated rules are necessary because Chapter 10 (adopted in June 2002) incorporates by reference Title 45 of the Code of Federal Regulations (CFR) Part 46, Protection of Human Subjects, and Title 42 CFR, Part 93, Public Health Service Policies on Research Misconduct (formerly Part 50). Part 46 was revised in January 2017, the first time since 1997. Part 93 was first published in 2005, replacing Part 50, subpart A, and was last published

October 1, 2017. The revisions include Institutional Review Board (IRB) operations, informed consent, scope of human subjects research, guidelines for exemptions, and compliance dates. A revision to the rules is needed to align with the federal regulatory changes. The effect of the change will benefit those who participate in Department programs or conduct surveillance of reportable conditions. A multitude of Department services are supported through U.S. Health and Human Services (HHS) funding, which may include the conduct of human subjects research as a part of program evaluation or in determination of risk factors or sequelae from exposures to environmental or biological exposures. The revisions will better protect the information or biospecimens of human subjects involved in research and align this research with the regulations of federal funding agencies, while reducing burden, delay, and ambiguity for investigators.

The proposal provides clarification regarding human subjects protection that currently rely on the state administrative rule, which sets forth ethical principles for safeguarding the rights and welfare of human beings recruited to participate in research activities as it existed 20 years ago. The concepts of identifiable information or biospecimens, technology, and related protections were previously not addressed. Moreover, the revised 45 CFR 46 specifically addresses public health authority and public health surveillance, which are not addressed in the pre-2017 version.

The research integrity portions of the Rule are not impacted by the change in 45 CFR 46 and will remain intact as moved from Chapter 10 to Chapter 2.

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-106

**COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSON:**

Malinda Douglas, Office of the State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail [malindad@health.ok.gov](mailto:malindad@health.ok.gov).

*[OAR Docket #17-729; filed 10-25-17]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 10. HUMAN SUBJECTS PROTECTION [REVOKED]**

*[OAR Docket #17-730]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Chapter 10. Human Subjects Protection [REVOKED]

**SUMMARY:**

310:10 - The current rules for human subject protection in research describe the boundaries in scope, actions, and authority for the agency's institutional review board and research integrity officer. The proposal will revoke Chapter 10. A modified Subchapter 31, Human Subjects Protection, will be added under Chapter 2, Procedures of the State Health Department. The effect of the rule change provides better alignment of the human subjects protection rule within the agency procedures identified in Chapter 2 at a new Subchapter 31 and is consistent with other state agencies. Chapter 10 (adopted in June 2002) incorporates by reference Title 45 of the Code of Federal Regulations (CFR) Part 46, Protection of Human Subjects, and Title 42 CFR, Part 93, Public Health Service Policies on Research Misconduct (formerly Part 50). Part 46 was revised in January 2017, the first time since 1997. Part 93 was first published in 2005, replacing Part 50,

## Notices of Rulemaking Intent

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subpart A, and was last published October 1, 2017. The new Subchapter 31 in Chapter 2 updates the incorporations by reference from the CFR.

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-106

### **COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

### **PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

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

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

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

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

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

### **CONTACT PERSON:**

Malinda Douglas, Office of the State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail [malindad@health.ok.gov](mailto:malindad@health.ok.gov).

*[OAR Docket #17-730; filed 10-25-17]*

## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 410. WIC**

*[OAR Docket #17-731]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

310:410-1-1 [AMENDED]

Subchapter 3. Vendor Management

Part 1. General Provisions

310:405-3-3 [AMENDED]

Part 3. WIC Vendor Application and Authorization Process

310:410-3-10 [AMENDED]

310:410-3-11 [AMENDED]

310:410-3-12 [AMENDED]

Part 5. WIC Vendor Education

310:410-3-20 [AMENDED]

Part 7. WIC Vendor Authorization and Responsibilities

310:410-3-33 [REVOKED]

310:410-3-34 [REVOKED]

310:410-3-35 [AMENDED]

310:410-3-40 [AMENDED]

Part 9. WIC Vendor Compliance and Sanctions

310:410-3-51 [AMENDED]

310:410-3-52 [AMENDED]

310:410-3-53 [AMENDED]

### **SUMMARY:**

The proposal amends rules to update the existing rules as they pertain to retail vendors in the Women, Infants and Children (WIC) Program. The proposal updates the existing rules pertaining to the purpose definitions, food benefits designation and State vendor violations and sanctions. These changes incorporate and revise terminology applicable to the new e-WIC service payment system and away from food instrument terminology. The proposed revisions align the rule with federal standards for WIC operations as established by the United State Department of Agriculture (USDA). The proposed changes will eliminate an identified error in the rule that misclassifies certain vendor violations and will reclassify them to a lower level of sanction.

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Title 62 O.S. Section 34.76

### **COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

### **PUBLIC HEARING:**

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

18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSON:**

Terry Bryce, Director, WIC Service, Oklahoma State Department of Health, 2401 N.W. 23rd Street, Oklahoma City, OK 73107; phone (405) 271-4676, Ext. 50011, e-mail [terryb@health.OK.gov](mailto:terryb@health.OK.gov).

*[OAR Docket #17-731; filed 10-25-17]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 550. NEWBORN SCREENING  
PROGRAM**

*[OAR Docket #17-732]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions  
310:550-1-1 [AMENDED]  
310:550-1-2 [AMENDED]
- Subchapter 3. Testing of Newborns  
310:550-3-1 [AMENDED]
- Subchapter 5. Specimen Collection  
310:550-5-1 [AMENDED]

- 310:550-5-2 [AMENDED]
- Subchapter 7. Hospital Recording  
310:550-7-1 [AMENDED]
- Subchapter 11. Advisory Committee  
310:550-11-1 [AMENDED]
- Subchapter 17. Follow-Up for Physicians  
310:550-17-1 [AMENDED]
- Subchapter 19. Reporting  
310:550-19-1 [AMENDED]
- Subchapter 21. Information  
310:550-21-1 [AMENDED]
- Subchapter 23. Standards, Procedures, and Follow-Up for Certified Laboratories  
310:550-23-1 [AMENDED]
- Appendix A. [REVOKED]
- Appendix B. [REVOKED]
- Appendix C. [REVOKED]
- Appendix D. [REVOKED]
- Appendix E. [REVOKED]

**SUMMARY:**

310:550-1-1 - The current rule sets forth the purpose of the rule chapter. The proposal removed the phrase upon completion of laboratory validation studies and establishment of follow-up services as these items have been completed and testing has been established for severe combined immunodeficiency. This phrase was removed throughout several sections of the rules for consistency.

310:550-1-2 - The current Rule uses the term "Mental Retardation". This term is outdated and may be considered disrespectful. This proposal replaces the aforementioned term with "Developmental Disabilities". Pursuant to 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. In order to promote consistency, it is necessary to amend all chapters that contain this terminology, even if those chapters do not equate persons with their condition. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

The proposal removed Prevention and Preparedness Services as the Newborn Screening Program no longer resides in that service area. Terms and definitions were added for clarity and references to appendices were removed, as those documents will now be publically available on the OSDH website.

310:550-3-1 - The proposal removed the phrase "upon completion of laboratory validation studies and establishment of follow-up services" as these items have been completed and testing has been established for severe combined immunodeficiency. Reference to Appendix C, Newborn Screening Parent Refusal Form, was removed, as that

## Notices of Rulemaking Intent

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document will now be publically available on the OSDH website.

310:550-5-1 - The proposal added language to include specimens collected at 24 hours of age require a repeat specimen to be recollected at 3-5 days of life. This was added to clarify that specimens collected at 24 hours of age are collected prior to the recommended time frame which is after 24 hours of age.

310:550-5-2 - The proposal removed reference to Appendix A, Instructions for Filter Paper Sample Collection, and replaced it with name of standard document for newborn screening specimen collection. Also the reference to Appendix D, Recommended Pulse Oximetry Screening Protocol, was removed as that document will now be publically available on the OSDH website.

310:550-7-1 - The proposal replaces the term "collection" with the term "form" for clarity and consistency when referring to the newborn screening from kit. Reference to Appendix A was removed as the image of the newborn screening form kit will publically available on the OSDH website. Reference to Appendix E, Pulse Oximetry Screening Result Form, was removed as that document will now be publically available on the OSDH website. Also reference to Appendix C, Newborn Screening Parent Refusal Form, was removed as that document will now be publically available on the OSDH website.

310:550-11-1 - The proposal replaces the Oklahoma Genetic Advisory Council with the Infant and Children's Health Advisory Council as the advising council to the Department.

310:550-17-1 - The proposal added language to include specimens collected at 24 hours of age require a repeat screen. This was added to clarify that specimens collected at 24 hours of age are collected prior to the recommended time frame which is after 24 hours of age. The phrase "upon completion of laboratory validation studies and establishment of follow-up services" was removed as these items have been completed and testing has been established for severe combined immunodeficiency.

310:550-19-1 - The proposal removed reference to Appendix B, Newborn Screening Program Report Form, as that document will now be publically available on the OSDH website. Also, the phrase "upon completion of laboratory validation studies and establishment of follow-up services" was removed from this section as well as these items have been completed and testing has been established for severe combined immunodeficiency.

310:550-21-1 - The proposal removed Prevention and Preparedness Services as the Newborn Screening Program no longer resides in that service area.

310:550-23-1 - The proposal added language to include specimens collected at 24 hours of age.

Appendix A. Instructions for Filer Paper Sample Collection - The proposal removed this appendix as the document will be publically available on the OSDH website.

Appendix B. Report Form - The proposal removed this appendix as the document will be publically available on the OSDH website.

Appendix C. Refusal Form - The proposal removed this appendix as the document will be publically available on the OSDH website.

Appendix D. Recommended Pulse Oximetry Screening Protocol - The proposal removed this appendix as the document will be publically available on the OSDH website.

Appendix E. Pulse Oximetry Screening Result Form - The proposal removed this appendix as the document will be publically available on the OSDH website.

Additional changes included minor grammatical changes. The impact of the rule change includes updating rule language, adding clarity for interpretation, and improving services for children living in Oklahoma.

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; Titles 25 O.S. § 40 and 63 O.S. Section 1-533(D).

### **COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

### **PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

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

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

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

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

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.health.ok.gov.

**CONTACT PERSONS:**

Lisa Caton, Director of Screening and Special Services, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6617, e-mail lisarc@health.ok.gov

*[OAR Docket #17-732; filed 10-25-17]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 625. CERTIFICATE OF NEED  
STANDARDS FOR ~~ICF/MR/ICF/IID~~**

*[OAR Docket #17-733]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- 310:625-1-1 [AMENDED]
- 310:625-1-2 [AMENDED]
- 310:625-1-3 [AMENDED]
- 310:625-1-4 [AMENDED]

**SUMMARY:**

This action will amend numerous sections within this chapter. The current Rule uses the term "Mentally Retarded". This term is outdated and may be considered disrespectful. This proposal replaces the aforementioned term with "Individuals with Intellectual Disabilities". Pursuant to Title 25 of the Oklahoma Statutes (O.S.) at Section 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

The action removes obsolete references to state schools operated by the State Department of Human Services.

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Titles 25 O.S. § 40 and 63 O.S. § 1-851.2(A)(7)

**COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through

December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contract person identified below or via the agency website at www.health.ok.gov.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.health.ok.gov.

**CONTACT PERSONS:**

Don Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail DonM@health.ok.gov or Kiersten Hamill, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 31272, e-mail KierstenH@health.ok.gov or Kari Holder, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 56265, e-mail KariH@health.ok.gov

*[OAR Docket #17-733; filed 10-25-17]*

## Notices of Rulemaking Intent

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### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING FACILITY BEDS

[*OKAR Docket #17-734*]

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

310:630-1-1 [AMENDED]

310:630-1-3 [AMENDED]

#### **SUMMARY:**

The current Rule uses the term "Mentally Retarded". This term is outdated and may be considered disrespectful. This proposal replaces the aforementioned term with "Individuals with Intellectual Disabilities". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

#### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; and Titles 25 O.S. § 40 and 63 O.S. § 1-851.2(A)(7)

#### **COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

#### **PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

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

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct

costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

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

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

#### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

#### **CONTACT PERSONS:**

Don Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail [DonM@health.ok.gov](mailto:DonM@health.ok.gov) or Kiersten Hamill, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 31272, e-mail [KierstenH@health.ok.gov](mailto:KierstenH@health.ok.gov) or Kari Holder, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 56265, e-mail [KariH@health.ok.gov](mailto:KariH@health.ok.gov)

[*OKAR Docket #17-734; filed 10-25-17*]

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### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

[*OKAR Docket #17-735*]

#### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

#### **PROPOSED RULES:**

Subchapter 5. Resident Assessments

310:663-5-3 [AMENDED]

#### **SUMMARY:**

310:663-5-3 - The current Rule uses the term "Mental Retardation". This term is outdated and may be considered disrespectful. This proposal replaces the aforementioned term with "Intellectual Disabilities". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. In order to promote consistency, it is necessary to amend all chapters that contain this terminology, even if those chapters do not equate persons with their condition. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers

for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; Titles 25 O.S. § 40 and 63 O.S. Section 1-890.3(A)

**COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contract person identified below or via the agency website at www.health.ok.gov.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.health.ok.gov.

**CONTACT PERSONS:**

Don Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail DonM@health.ok.gov or Kiersten Hamill, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 31272, e-mail KierstenH@health.ok.gov or Kari Holder, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City,

OK 73117-1207; phone (405) 271-9444 ext. 56265, e-mail KariH@health.ok.gov

[OAR Docket #17-735; filed 10-25-17]

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

[OAR Docket #17-736]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions  
310:675-1-2. [AMENDED]
- Subchapter 3. Licenses  
310:675-3-1.1. [AMENDED]
- Subchapter 9. Resident Care Services  
310:675-9-5.1. [AMENDED]
- Subchapter 11. Intermediate Care Facilities of 16 Beds and Less for Individuals with Intellectual Disabilities (ICF/IID - 16)  
310:675-11-1. [AMENDED]  
310:675-11-2. [AMENDED]  
310:675-11-3. [AMENDED]  
310:675-11-4. [AMENDED]  
310:675-11-5. [AMENDED]  
310:675-11-6. [AMENDED]  
310:675-11-7. [AMENDED]  
310:675-11-8. [AMENDED]  
310:675-11-9. [AMENDED]
- Subchapter 13. Staff Requirements  
310:675-13-12. [AMENDED]  
310:675-13-14. [AMENDED]

**SUMMARY:**

This action will amend numerous sections within this chapter. The current Rule uses the terms "Mental Retardation", "Mentally Retarded" and "Qualified Mental Retardation Professional". These terms are outdated and may be considered disrespectful. This proposal replaces the aforementioned terms with "Individuals with Intellectual Disabilities", "Individuals with Developmental Disabilities", or "Qualified Intellectual Disability Professional". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

## Notices of Rulemaking Intent

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A scrivener's error omitted the removal of a reference to the old life safety code in 310:675-11-5. This section was amended last year to incorporate the 2012 edition of the Life Safety Code adopted by the Centers for Medicare & Medicaid Services. The amendment to this section addresses this omission by striking the old reference and supporting language applicable to the former code.

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; Titles 25 O.S. § 40 and 63 O.S. Section 1-1942

### **COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

### **PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

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

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

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

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

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

### **CONTACT PERSONS:**

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

Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 31272, e-mail [KierstenH@health.ok.gov](mailto:KierstenH@health.ok.gov) or Kari Holder, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 56265, e-mail [KariH@health.ok.gov](mailto:KariH@health.ok.gov)

*[OAR Docket #17-736; filed 10-25-17]*

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## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 677. NURSE AIDE TRAINING AND CERTIFICATION**

*[OAR Docket #17-737]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

310:677-1-2 [AMENDED]

310:677-1-3 [AMENDED]

Subchapter 3. Nurse Aide Training and Competency

Examination Program

310:677-3-4 [AMENDED]

Subchapter 5. Nurse Aide Registry

310:677-5-2 [AMENDED]

Subchapter 13. Certified Medication Aides

310:677-13-1 [AMENDED]

Subchapter 15. ~~Developmentally Disabled Direct~~ ICF/IID

Care Aides

310:677-15-1 [AMENDED]

310:677-15-2 [AMENDED]

310:677-15-3 [AMENDED]

310:677-15-4 [AMENDED]

310:677-15-5 [AMENDED]

Subchapter 17. Residential Care Aides

310:677-17-1 [AMENDED]

Subchapter 19. Adult Day Care Program Aides

310:677-19-1 [AMENDED]

### **SUMMARY:**

This action proposes to amend numerous sections within this chapter. The current Rule uses the terms "Mental Retardation", "Mentally Retarded" and "Qualified Mental Retardation Professional". These terms are outdated and may be considered disrespectful. This proposal replaces the aforementioned terms with "Individuals with Intellectual Disabilities", "Individuals with Developmental Disabilities", or "Qualified Intellectual Disability Professional". Pursuant to Title 25 O.S. § 40, statutes and administrative rules should avoid language that equates persons with their condition and should replace nonrespectful language by referring to persons with disabilities as persons first. Further, national organizations such as the Americans with Disabilities Act National Network, American Association on Intellectual and

Developmental Disabilities and Centers for Medicare and Medicaid encourage use of more respectful language that has gained wide acceptance in recent disability laws.

This action proposes to amend the classification of Developmentally Disabled Direct Care Aides to ICF/IID Care Aides. "ICF/IID" is defined to mean an Intermediate Care Facility for Individuals with Intellectual Disabilities.

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104; Titles 25 O.S. § 40 and 63 O.S. Section 1951(B)

**COMMENT PERIOD:**

November 15, 2017, through December 18, 2017. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through December 18, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on December 18, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 314 beginning at 2pm. The alternate date and time in the event of an office closure due to inclement weather is December 20, 2017, in room 1102, beginning at 2pm. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar

amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 18, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSONS:**

Don Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail [DonM@health.ok.gov](mailto:DonM@health.ok.gov) or Kiersten Hamill, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 31272, e-mail [KierstenH@health.ok.gov](mailto:KierstenH@health.ok.gov) or Kari Holder, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-9444 ext. 56265, e-mail [KariH@health.ok.gov](mailto:KariH@health.ok.gov)

*[OAR Docket #17-737; filed 10-25-17]*

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# Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to "final adoption," as defined in 75 O.S., Section 250.3(5), by notifying the Governor and the Legislature, and by publishing a notice of such a withdrawal in the *Register*.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. However, the withdrawal notice is not published in the *Register* unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the emergency rules.

*For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.*

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

*[OAR Docket #17-715]*

### **RULEMAKING ACTION:**

Withdrawal of EMERGENCY rulemaking

### **RULES:**

Subchapter 1. Trust Account Procedures

605:10-1-2 [AMENDED]

Subchapter 3. Education Examination Requirements

605:10-3-1 [AMENDED]

605:10-3-2 [AMENDED]

605:10-3-4 [AMENDED]

605:10-3-4.1 [NEW]

605:10-3-6 [AMENDED]

Subchapter 5. Instructor and Entity Requirements and Standards

605:10-5-2 [AMENDED]

Subchapter 7. Licensing Procedures and Options

605:10-7-1 [AMENDED]

605:10-7-2 [AMENDED]

605:10-7-4 [AMENDED]

605:10-7-7 [AMENDED]

605:10-7-8 [AMENDED]

605:10-7-8.1 [AMENDED]

605:10-7-8.2 [AMENDED]

Subchapter 9. Broker's Operational Procedures

605:10-9-3.2 [NEW]

605:10-9-4 [AMENDED]

### **DATES:**

#### **Adoption:**

September 13, 2017

#### **Submission of adopted rules to Governor and Legislature:**

September 18, 2017

*[OAR Docket #17-715; filed 10-16-17]*

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# Emergency Adoptions

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

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

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

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

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

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

[OAR Docket #17-711]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-4.1. [AMENDED]  
317:30-3-30. [AMENDED]  
(Reference APA WF # 17-13)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

September 27, 2017

### APPROVED BY GOVERNOR:

October 6, 2017

### EFFECTIVE:

Immediately upon Governor's approval

### EXPIRATION:

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

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The agency finds that a compelling public interest exists to the preservation of public health, safety, or welfare, which necessitates promulgation of emergency rules. These emergency revisions are necessary in order to revert the three (3) day signature requirement language back to the policy that was in place from June 25, 2011 to September 1, 2017. The reinstatement of the previous language is necessary to prevent an unintended administrative burden to providers.

### GIST/ANALYSIS:

These emergency revisions will clarify the authentication of electronic medical records. Current policy that became effective September 1, 2017 requires that the record be authenticated within three (3) days of the provision of the underlying service. New revisions will revert the three (3) day signature language to the policy that was in place on June 25, 2011. The proposed revisions will clarify that the authentication of medical records is expected on the day the record is completed. Additionally, revisions will describe that the signature of the rendering provider and date entry is expected within three (3) business days from the day the record is completed if the record is being transcribed.

### CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

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

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### 317:30-3-4.1. Uniform Electronic Transaction Act

These rules regulate the format, use, and retention of electronic records and signatures generated, sent, communicated, received, or stored by the Oklahoma Health Care Authority (OHCA), in conformity with the Uniform Electronic Transaction Act, found at Section 15-101 et seq. of Title 12A of the Oklahoma Statutes.

(1) **Use of electronic records and electronic signatures.** The rules regarding electronic records and electronic signatures apply when both parties agree to conduct business electronically. Nothing in these regulations requires parties to conduct business electronically. However, should a party have the capability and desire to conduct business electronically with the OHCA, then the following guidelines must be adhered to:

(A) Only employees designated by the provider's agency may make entries in the member's medical record. All entries in the member's medical record must be dated and authenticated with a method established to identify the author. The identification method may include computer keys, Private/Public Key Infrastructure (PKIs), voice authentication systems that utilize a personal identification number (PIN) and voice authentication, or other codes. Providers must have a process in place to deactivate

## Emergency Adoptions

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an employee's access to records upon termination of employment of the designated employee.

(B) When PKIs, computer key/code(s), voice authentication systems or other codes are used, a signed statement must be completed by the agency's employee documenting that the chosen method is under the sole control of the person using it and further demonstrate that:

- (i) A list of PKIs, computer key/code(s), voice authentication systems or other codes can be verified;
- (ii) All adequate safeguards are maintained to protect against improper or unauthorized use of PKIs, computer keys, or other codes for electronic signatures; and
- (iii) Sanctions are in place for improper or unauthorized use of computer key/code(s), PKIs, voice authentication systems or other code types of electronic signatures.

(C) There must be a specific action by the author to indicate that the entry is verified and accurate. Systems requiring an authentication process include, but are not limited to:

- (i) Computerized systems that require the provider's employee to review the document on-line and indicate that it has been approved by entering a unique computer key/code capable of verification;
- (ii) A system in which the provider's employee signs off against a list of entries that must be verified in the member's records;
- (iii) A mail system that sends transcripts to the provider's employee for review;
- (iv) A postcard identifying and verifying the accuracy of the record(s) signed and returned by the provider's employee; or
- (v) A voice authentication system that clearly identifies the author by a designated personal identification number or security code.

(D) Auto-authentication systems that authenticate a report prior to the transcription process do not meet the stated requirements and will not be an acceptable method for the authentication process.

(E) The authentication of an electronic medical record (signature and date entry) ~~must occur within three (3) days of the provision of the underlying service, including those instances in which is expected on the day the record is completed.~~ If the electronic medical record is transcribed by someone other than the provider, the signature of the rendering provider and date entry is expected within three (3) business days from the day the record is completed. Before any claim is submitted to OHCA for payment of a provided service, the provider must authenticate the electronic medical records relating to that service.

(F) Records may be edited by designated administrators within the provider's facility. Edits must be in the form of a correcting entry which preserves entries

from the original record. Edits must be completed prior to claims submission or no later than forty-five (45) days after the date of service, whichever occurs first.

(G) Use of the electronic signature, for clinical documentation, shall be deemed to constitute a signature and will have the same effect as a written signature on the clinical documentation. The section of the electronic record documenting the service provided must be authenticated by the employee or individual who provided the described service.

(H) Any authentication method for electronic signatures must:

- (i) be unique to the person using it;
- (ii) identify the individual signing the document by name and title;
- (iii) be capable of verification, assuring that the documentation cannot be altered after the signature has been affixed;
- (iv) be under the sole control of the person using it;
- (v) be linked to the data in such a manner that if the data is changed, the signature is invalidated; and
- (vi) provide strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid.

(I) Failure to properly maintain or authenticate medical records (i.e., signature and date entry) may result in the denial or recoupment of SoonerCare payments.

(2) **Record retention for provider medical records.** Providers must retain electronic medical records and have access to the records in accordance with guidelines found at OAC 317:30-3-15.

(3) **Record retention for documents submitted to OHCA electronically.**

(A) The OHCA's system provides that receivers of electronic information may both print and store the electronic information they receive. The OHCA is the custodian of the original electronic record and will retain that record in accordance with a disposition schedule as referenced by the Records Destruction Act. The OHCA will retain an authoritative copy of the transferable record as described in the Electronic Transaction Act that is unique, identifiable and unalterable.

- (i) **Manner and format of electronic signature.** The manner and format required by the OHCA will vary dependent upon whether the sender of the document is a member or a provider. In the limited case where a provider is a client, the manner and format is dependent upon the function served by the receipt of the record. In the case the function served is a request for services, then the format required is that required by a recipient. In the case the function served is related to payment

for services, then the format required is that required by a provider.

(ii) **Member format requirements.** The OHCA will allow members to request SoonerCare services electronically. An electronic signature will be authenticated after a validation of the data on the form by another database or databases.

(iii) **Provider format requirements.** The OHCA will permit providers to contract with the OHCA, check and amend claims filed with the OHCA, and file prior authorization requests with the OHCA. Providers with a social security number or federal employer's identification number will be given a personal identification number (PIN). After using the PIN to access the database, a PIN will be required to transact business electronically.

(B) Providers with the assistance of the OHCA will be required to produce and enforce a security policy that outlines who has access to their data and what transaction employees are permitted to complete as outlined in the policy rules for electronic records and electronic signatures contained in paragraph two (2) of this section.

(C) Third Party billers for providers will be permitted to perform electronic transaction as stated in paragraph two (2) only after the provider authorizes access to the provider's PIN and a power of attorney by the provider is executed.

(4) **Time and place of sending and receipt.** The provisions of the Electronic Transaction Act apply to the time and place of sending and receipt. Should a power failure, Internet interruption or Internet virus occur, confirmation by the receiving party will be required to establish receipt.

(5) **Illegal representations of electronic transaction.** Any person who fraudulently represents facts in an electronic transaction, acts without authority, or exceeds his or her authority to perform an electronic transaction may be prosecuted under all applicable criminal and civil laws.

**317:30-3-30. Signature requirements**

(a) For medical review purposes, the Oklahoma Health Care Authority (OHCA) requires that all services provided and/or ordered be authenticated by the author. The method used shall be a handwritten signature, electronic signature, or signature attestation statement. Stamped signatures are not acceptable. Pursuant to Federal and/or State law, there are some circumstances for which an order does not need to be signed.

(1) Facsimile of original written or electronic signatures are acceptable for the certifications of terminal illness for hospice.

(2) Orders for clinical diagnostic tests are not required to be signed. If the order for the clinical diagnostic test is unsigned, there must be medical documentation by the treating physician that he/she intended the clinical diagnostic test be performed. This documentation showing the intent that the test be performed must be authenticated by the author via a handwritten or electronic signature.

(3) Orders for outpatient prescription drugs are not required to be signed. If the order for a prescription drug is unsigned, there must be medical documentation by the treating physician that he/she intended that the prescription drug be ordered. This documentation showing the intent that the prescription drug be ordered must be authenticated by the author via a handwritten or electronic signature.

(b) A handwritten signature is a mark or sign by an individual on a document to signify knowledge, approval, acceptance, or obligation. The authentication of a medical record (signature and date entry) ~~must occur within three (3) days of provision of the underlying service, including those instances in which the electronic medical record is transcribed by someone other than the provider. Before any claim is submitted to the OHCA for payment of a provided service, the provider must authenticate the electronic medical records relating to that service.~~ is expected on the day the record is completed. If the medical record is transcribed by someone other than the provider, the signature of the rendering provider and date entry is expected within three (3) business days from the day the record is completed. Before any claim is submitted to OHCA for payment of a provided service, the provider must authenticate the medical records relating to that service.

(1) If a signature is illegible, the OHCA will consider evidence in a signature log or attestation statement to determine the identity of the author of a medical record entry.

(2) If the signature is missing from an order, the OHCA will disregard the order during the review of the claim.

(3) If the signature is missing from any other medical documentation, the OHCA will accept a signature attestation from the author of the medical record entry.

(c) Providers may include in the documentation they submit a signature log that lists the typed or printed name of the author associated with initials or an illegible signature.

(1) The signature log may be included on the actual page where the initials or illegible signature are used or may be a separate document.

(2) The OHCA will not deny a claim for a signature log that is missing credentials.

(3) The OHCA will consider all submitted signature logs regardless of the date they were created.

(d) Providers may include in the documentation they submit a signature attestation statement. In order to be considered valid for medical review purposes, an attestation statement must be signed and dated by the author of the medical record entry and must contain sufficient information to identify the member.

(1) The OHCA will not consider signature attestation statements where there is no associated medical record entry.

(2) The OHCA will not consider signature attestation statements from someone other than the author of the medical record entry in question.

(3) The OHCA will consider all signature attestation statements that meet the above requirements regardless of the date the attestation was created, except in those cases

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where the regulations or rules indicate that a signature must be in place prior to a given event or a given date.

(e) Providers may use electronic signatures as an alternate signature method.

(1) Providers must use a system and software products which are protected against modification and must apply administrative procedures which are adequate and correspond to recognized standards and laws.

(2) Providers utilizing electronic signatures bear the responsibility for the authenticity of the information being attested to.

(3) Providers utilizing electronic signatures must comply with OAC 317:30-3-4.1.

(f) Nothing in this section is intended to absolve the provider of their obligations in accordance with the conditions set forth in their SoonerCare contract and the rules delineated in OAC 317:30.

[OAR Docket #17-711; filed 10-9-17]

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

[OAR Docket #17-712]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696. [AMENDED]

(Reference APA WF # 17-14)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 CFR 483.55

### ADOPTION:

September 27, 2017

### APPROVED BY GOVERNOR:

October 4, 2017

### EFFECTIVE:

Immediately upon Governor's approval

### EXPIRATION:

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

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The agency requests emergency approval to ensure that the State does not exhaust additional dollars to services that were not intended to be covered and compensable. Clarifying SoonerCare's current dental coverage for adults will also help reduce the agency's operations budget in order to meet the balanced budget requirements as mandated by state law.

### GIST/ANALYSIS:

These emergency revisions are necessary to clarify dental coverage for adults by amending the rule that limits dental services for adults to emergency extractions. The policy was initially intended for emergency extractions and was later revised to medically necessary extractions. The intent of the change was to ensure the emergency extractions were medically necessary; therefore, the policy will revert to the original language to include the term emergency along with reference to where emergency dental care is defined in policy.

Additionally, the proposed revisions add new language on the medically necessary images and oral examination that can accompany an emergency extraction.

### CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

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

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 79. DENTISTS

#### 317:30-5-696. Coverage by category

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

(1) **Adults.**

(A) Dental coverage for adults is limited to:

(i) ~~medically—necessary emergency~~ extractions, as defined in OAC 317:30-5-695, ~~and approved boney adjustments.~~ Tooth extraction must have medical need documented;

(ii) limited oral examinations and medically necessary images associated with the emergency extraction or with a clinical presentation with reasonable expectation that an emergency extraction will be needed;

~~(iii)~~ Smoking and Tobacco Use Cessation Counseling; and

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

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

(C) Limited dental services are available for members who meet all medical criteria, but need dental clearance to obtain organ transplant approval. Providers must obtain prior authorization before delivery of dental service, with the exception of evaluation and extractions. All requests must be filed on the currently approved American Dental Association (ADA) form and must include diagnostic images, six-point periodontal charting, narratives and comprehensive treatment plans. The OHCA will notify the provider of determination using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the

prior authorization request. The following dental services are available:

- (i) comprehensive oral evaluation,
- (ii) two image bitewings,
- (iii) prophylaxis,
- (iv) fluoride application,
- (v) limited restorative procedures, and
- (vi) periodontal scaling/root planing.

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

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

(A) **Comprehensive oral evaluation.** This procedure should precede any images, and chart documentation must include image interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if not seen by any dentist for more than six months. An examination should precede any images, and chart documentation must include images interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

(C) **Limited oral evaluation.** This procedure is only compensable to the same dentist or practice for two visits prior to a comprehensive or periodic evaluation examination being completed.

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

and must be of diagnostic quality. Individually listed intraoral images by the same dentist/dental office are considered a complete series if the number of individual images equals or exceeds the traditional number for a complete series. Panoramic films are only compensable when chart documentation clearly indicates reasons for the exposure based on clinical findings. This type of exposure is not to rule out or evaluate caries. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of age and is compensable once every 36 months if medical necessity is documented.

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

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

- (i) Stainless steel crowns are allowed if:
  - (I) the child is five years of age or under;
  - (II) 70 percent or more of the root structure remains; or
  - (III) the procedure is provided more than 12 months prior to normal exfoliation.
- (ii) Stainless steel crowns are treatment of choice for:
  - (I) primary teeth treated with pulpal therapy, if the above conditions exist;
  - (II) primary teeth where three surfaces of extensive decay exist; or
  - (III) primary teeth where cuspal occlusion is lost due to decay or accident.

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

(iv) Placement of a stainless steel crown is allowed once for a minimum period of 24 months. No other restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

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

- (i) Stainless steel crowns are the treatment of choice for:
  - (I) posterior permanent teeth that have completed endodontic therapy if three or more surfaces of tooth is destroyed;
  - (II) posterior permanent teeth that have three or more surfaces of extensive decay; or
  - (III) where cuspal occlusion is lost due to decay prior to age 16 years.

## Emergency Adoptions

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- (ii) Preoperative periapical images and/or written documentation explaining the extent of decay must be available for review, if requested.
  - (iii) Placement of a stainless steel crown excludes placement of any other type of crown for a period of 24 months. No other restoration on that tooth is compensable during that period of time.
- (I) **Pulpotomies and pulpectomies.**
- (i) Therapeutic pulpotomies and pulpal debridement are allowable once per lifetime. Pre- and post-operative periapical images must be available for review, if requested. Therapeutic pulpotomies and pulpal debridement is available for the following:
    - (I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;
    - (II) Tooth numbers O and P before age five years;
    - (III) Tooth numbers E and F before six years;
    - (IV) Tooth numbers N and Q before five years;
    - (V) Tooth numbers D and G before five years.
  - (ii) Therapeutic pulpotomies and pulpal debridement are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.
- (J) **Endodontics.** Payment is made for the services provided in accordance with the following:
- (i) This procedure is allowed when there are no other missing anterior teeth in the same arch requiring replacement.
  - (ii) The provider documents history of member's improved oral hygiene and flossing ability in records.
  - (iii) Prior authorization is required for members who have a treatment plan requiring more than two anterior and/or two posterior root canals.
  - (iv) Pre and post-operative periapical images must be available for review.
  - (v) Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA.
  - (vi) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.
  - (vii) Endodontically treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.
- (K) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.
- (i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:
    - (I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge.
    - (II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.
    - (III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.
    - (IV) The teeth numbers shown on the claim should be those of the missing teeth.
    - (V) Post-operative bitewing images must be available for review.
    - (VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.
  - (ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:
    - (I) Lingual arch bar is used when permanent incisors are erupted and the second primary molar (K or T) is missing in the same arch.
    - (II) The requirements are the same as for band and loop space maintainer.
    - (III) Pre and post-operative images must be available.
- (L) **Analgesia.** Analgesia services are reimbursable in accordance with the following:
- (i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation, or general anesthesia. The medical need for this service must be documented in the member's record.
  - (ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation, or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of

the member and/or the dentist, it must be medically necessary.

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

(N) **Protective restorations.** This restoration includes removal of decay, if present, and is reimbursable for the same tooth on the same date of service with a direct or indirect pulp cap, if needed. Permanent restoration of the tooth is allowed after 60 days unless the tooth becomes symptomatic and requires pain relieving treatment.

(O) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, certified nurse midwives, Oklahoma State Health Department and FQHC nursing, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS) staff in addition to other appropriate services rendered. Chart documentation must include a separate note that addresses the 5A's, separate signature, and the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(P) **Diagnostic casts and oral/facial images.** Diagnostic casts or oral/facial images may be requested by OHCA or representatives of OHCA. If cast or images are received they will be considered supporting documentation and may be used to make a determination for authorization of services. Submitted documentation used to base a decision will not be returned. Providers will be reimbursed for either the study model or images.

(i) Documentation of photographic images must be kept in the client's medical record and medical necessity identified on the submitted electronic or paper claim.

(ii) Oral/facial photographic images are allowed under the following conditions:

(I) When radiographic images do not adequately support the necessity for requested treatment.

(II) When photo images better support medical necessity for the requested treatment rather than diagnostic models.

(III) If a comprehensive orthodontic workup has not been performed.

(iii) For photographic images, the oral/facial portfolio must include a view of the complete lower arch, complete upper arch, and left and right maximum intercuspation of teeth.

(I) Maximum intercuspation refers to the occlusal position of the mandible in which the cusps of the teeth of both arches fully interpose themselves with the cusps of the teeth of the opposing arch.

(II) Intercuspation defines both the anterior-posterior and lateral relationships of the mandible and the maxilla, as well as the superior-inferior relationship known as the vertical dimension of occlusion.

(iv) Study models or photographic images not in compliance with the above described diagnostic guidelines will not be compensable. The provider may be allowed to resubmit new images that adhere to the diagnostic guidelines. If the provider does not provide appropriate documentation, the request for treatment will be denied.

[OAR Docket #17-712; filed 10-9-17]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION  
CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE**

[OAR Docket #17-738]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 1. General Provisions  
810:25-1-2. Definitions [AMENDED]

**AUTHORITY:**  
Workers' Compensation Commission; 85A O.S. §§ 1 et seq.; 85A O.S. § 36

**COMMENT PERIOD:**  
January 17, 2017 through February 16, 2017

**PUBLIC HEARING:**  
February 21, 2017

**ADOPTION:**  
August 17, 2017

**APPROVED BY GOVERNOR:**  
September 11, 2017

**EFFECTIVE:**  
Immediately upon Governor's approval or September 12, 2017, whichever is later

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

# Emergency Adoptions

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## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## FINDING OF EMERGENCY:

Pursuant to 85A O.S., §36, the Commission is responsible for issuing Certificates of Noncoverage to "sole proprietors" and "partners of a partnership" who elect not to be covered by the Administrative Workers' Compensation Act. In order to avoid serious prejudice to the public interest, the proposed emergency rule amendments are necessary to define these terms and clarify the scope of the regulatory role of the Commission when issuing Certificates of Noncoverage.

## GIST/ANALYSIS:

The emergency rules define the terms "Certification of noncoverage", "partner of a partnership", and "sole proprietor" to clarify the Commission's regulatory role and application of these terms when issuing Certificates of Noncoverage pursuant to 85A O.S., § 36.

## CONTACT PERSON:

Lindsey Christopher, Commission Counsel, OWCC, 212 Kerr State Office Building, 440 S. Houston, Tulsa, Oklahoma 74127, 918-295-3731, lindsey.christopher@wcc.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F) AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR SEPTEMBER 12, 2017, WHICHEVER IS LATER:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 810:25-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Administrator"** means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

**"Advisory loss costs"** means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

**"Aggregate excess insurance"** means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

**"Association" or "Group Self-Insurance Association"** means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

**"AWCA"** means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

**"Board" or "Members' Supervisory Board"** means the supervisory board of members of an association.

**"Cancellation short rate penalty"** means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

**"Certificate of noncoverage" or "CNC"** for purposes of 85A O.S. § 36 means a certificate ~~which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to that certifies that the Commission received a completed, signed and notarized affidavit and application for certificate of noncoverage by a sole proprietor or the partners/partner of a partnership who do on the form prescribed by the Commission and that the information provided by the applicant, if true and correct, indicates that the applicant does not elect to be covered by the AWCA.~~

**"Certified audit"** means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

**"Claims reserves"** means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

**"Commission"** means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

**"Common interest"** means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

**"Expense constant"** means a flat charge included in a workers' compensation policy to cover the costs of issuing and servicing the policy.

**"Experience modifier"** means a modification to premium based on the claims history of the policyholder.

**"IBNR"** means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims.

**"Incurred loss"** means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

**"Insurance Department"** means the Insurance Department of the State of Oklahoma.

**"Joint and several liability"** means mutual and individual responsibility of members for the liabilities of the association.

**"Loss portfolio transfer"** means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

**"Member"** means an individual member of an association.

**"NCCI"** means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

**"Partnership/Partner of a partnership"** means for purposes of 85A O.S. §36 ~~a type of unincorporated business or organization in which two or more individuals own the business and are equally liable for its debts~~ any partner of a partnership or any member of a Limited Liability Company that is treated as a partnership for federal income tax purposes.

**"Pro forma financial statement"** means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

**"Proof of coverage"** means the statutory filings of workers' compensation policy information to the NCCI.

**"Scopes Manual"** is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

**"Self insured retention"** means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

**"Sole proprietor"** means for purposes of 85A O.S. § 36 an one individual (or married couple) who is sole owner of a business alone that is neither a partnership nor an incorporated or the sole member of a limited liability company Limited Liability Company that is treated as a disregarded entity for federal income tax purposes.

**"Solvency"** means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

**"Specific excess insurance"** means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

**"Standard premium"** means experience modified workers' compensation premium that has not been discounted.

**"Statutory limits"** means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

**"TPA" or "Third-Party Administrator"** means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

**"Unearned premium"** means the share of the members' premiums applicable to the unexpired portion of the policy terms.

*[OAR Docket #17-738; filed 10-25-17]*

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# Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

## TITLE 1. EXECUTIVE ORDERS

### 1:2017-29A.

#### AMENDED EXECUTIVE ORDER 2017-29

To the Honorable Members of the Oklahoma House of Representatives and the Honorable Members of the Oklahoma State Senate:

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby amend the call for the First Extraordinary Session of the Fifty Sixth Legislature, which convened at the State Capitol on Monday, September, 25, 2017. I recommend the following amended subjects for the Legislature's consideration:

To address the immediate budget shortfall created by the loss of the \$215 million cigarette fee revenue.

To have the option to address a long term solution to the continuing budget shortfalls.

To address the need for more consolidation and other efficiencies in all areas of state government.

To clarify through legislative amendment the intended exemptions to the new 1.25% sales tax on vehicles.

To address a needed pay increase for classroom teachers in the K-12 common education system.

To address a needed pay increase for specified state employees.

To address tax relief from low income working Oklahomans.

Copies of this Amended Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate, and the Director of the Office of Management and Enterprise Services.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24 day of October, 2017.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

Dave Lopez  
Secretary of State

*[OAR Docket #17-716; filed 10-24-17]*

### 1:2017-32.

#### EXECUTIVE ORDER 2017-32

To the Honorable Members of the Oklahoma House of Representatives and the Honorable Members of the Oklahoma State Senate:

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the provisions of Section 23 of Article X of the Oklahoma Constitution, hereby declare that an emergency exists in the State of Oklahoma by reason of a lack of adequate funding for programs vital to the continued economic, educational, and social development of Oklahomans, and for health and safety issues.

Having declared that emergency conditions exist, I request the Senate and House of Representatives to concur in this declaration of emergency and to appropriate Twenty-three Million, Three Hundred Thirty-eight Thousand, One Hundred Sixty-nine Dollars and 50/100 (\$23,338,169.50) from the Constitutional Reserve for the following purposes:

Providing revenues to partially offset the loss of revenue to the FY18 budget resulting from the decision by the Oklahoma Supreme Court.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate, the Director of

## Executive Orders

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State Finance, and the Director of the Office of Management and Enterprise Services.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of October, 2017.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

[OAR Docket #17-717; filed 10-24-17]

**1:2017-33.**

### EXECUTIVE ORDER 2017-33

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Oklahoma Constitution Article VI Sections 1, 2, and 8, of the Oklahoma Constitution, hereby approve the State Mitigation Trust created, among other States, for the benefit of the State of Oklahoma in the lawsuit entitled, *In Re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL Case No. 2672 CRB (JSC) referred to herein as the "MDL 2672," and arising out of *United States v. Volkswagen AG et al.*, Case No. CV-295 (N.D. Cal.).

As explanation, on October 25, 2016, the Court entered a Partial Consent Decree ("First Partial Consent Decree"), MDL No. 2672(JSC) (Dkt. No. 2103-1), among Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, the "Settling Defendants"), the United States, and the State of California.

In that case, on May 17, 2017, the Court also entered a Second Partial Consent Decree (Dkt. No. 3228-1) among the Settling Defendants, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. (collectively, the "Defendants"), the United States, and the State of California. Pursuant to the First Partial Consent Decree and the Second Partial Consent Decree, the Defendants and Wilmington Trust, N.A. (the "Trustee"): (1) entered into said Environmental Mitigation Trust Agreement for State Beneficiaries (i.e., for the 50 States, Puerto Rico, and the District of Columbia) (hereinafter, the "State Trust Agreement") and established the environmental mitigation trust described in the State Trust Agreement (the "State Mitigation Trust" or "State Trust"); and (2) concurrently entered into a separate Environmental Mitigation Trust Agreement for Indian Tribe Beneficiaries (i.e., for federally-recognized Indian Tribes) (hereinafter, the "Indian Tribe

Trust Agreement") and established the environmental mitigation trust described in that agreement ("Indian Tribe Mitigation Trust" or "Indian Tribe Trust").

The Settling Defendants and the Trustee acknowledged in the State Trust Agreement that the purpose of the State Mitigation Trust and the Indian Tribe Mitigation Trust is to fulfill the Settling Defendants' environmental mitigation obligations to the states and to the Tribes, under the First Partial Consent Decree and the Settling Defendants' environmental mitigation obligations under the Second Partial Consent Decree.

Therefore, in accepting the Consent Decree and State Trust Agreement recited above, I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Sections 1, 2, and 8 of Article VI of the Oklahoma Constitution, hereby order the following with respect to the State Trust Agreement and the State Mitigation Trust:

1. On October 30, 2017, I, as the Chief Executive Officer of the State of Oklahoma, certify the beneficiary status of the State of Oklahoma to the State Mitigation Trust, thereby making the State of Oklahoma a Beneficiary to the State Mitigation Trust, as defined in Section 1.1 of the State Trust Agreement.
2. I hereby designate the Oklahoma Department of Environmental Quality ("ODEQ") as the Lead Agency (hereinafter, "Lead Agency") within the meaning of the State Trust Agreement, as that term of art is described in paragraph 4.2.1 of the State Trust Agreement.
3. I direct that the Lead Agency, as designated by me, shall coordinate its duties under the Trust under the direction and supervision of the Cabinet Secretary of Energy and Environment ("SOEE") or successor cabinet position having authority over the ODEQ (hereinafter, "Cabinet Secretary"), in the creation and implementation of the State of Oklahoma's Beneficiary Mitigation Plan ("Plan").
4. I further direct that the Lead Agency shall prepare and implement the Plan, as required by and in accordance with the State Trust Agreement as set forth in Section 4.1. Prior to submission of the Plan, the Lead Agency shall present the plan to the Cabinet Secretary for approval.
5. I further direct that the Lead Agency shall work with stakeholders and the general public to solicit projects eligible for funding under the terms of the State Trust Agreement to develop Eligible Mitigation Actions as this term is defined in Section 1.9 of the State Trust Agreement. Prior to submission of all Eligible Mitigation Action Funding Requests to the Trustee, the Lead Agency shall submit these requests for approval to the Cabinet Secretary. The Lead Agency shall maintain a public-facing website for the purpose of publishing required documents pursuant to the State Trust Agreement.

This Executive Order shall be distributed to all members of the Governor's Executive Cabinet and the chief executives

of all State Agencies for implementation consistent with this Executive Order.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #17-740; filed 10-30-17]*

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**TITLE 777. STATEWIDE VIR-  
TUAL CHARTER SCHOOL BOARD  
CHAPTER 10. STATEWIDE VIRTUAL  
CHARTER SCHOOLS**

**PROMULGATION ERROR:**

Subsection (d) in Section 777:10-3-4 was mistakenly included in finally adopted permanent rules submitted by the Statewide Virtual Charter School Board for promulgation in the 9-1-17 issue of the *Oklahoma Register* [see 34 Ok Reg 2134; Docket # 17-640], with a scheduled effective date of 9-11-17. However, subsection (d) had been previously withdrawn from the proposed rules [see Notice of Withdrawn Rules at 34 Ok Reg 543], and should not have been promulgated. As such, subsection (d) of Section 777:10-3-4 did NOT become effective as scheduled and is not being published in the *Oklahoma Administrative Code*.

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