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# Notices of Rulemaking Intent

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

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

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

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## **TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 35. ENTERPRISE ZONES**

*[OAR Docket #19-710]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 9. Incentives

150:35-9-2. Priority enterprise zone incentives [NEW]

### **SUMMARY:**

This action is to set out guidelines as to when an Enterprise Zone is eligible for designation as a Priority Enterprise Zone and the selection criteria for Priority Enterprise Zones. Furthermore, it establishes a definition for when an Enterprise Zone may be designated as a Priority Enterprise Zone, and the duration of such a designation.

### **AUTHORITY:**

The legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq.; 62 O.S. §690.3(D).

### **COMMENT PERIOD:**

Written and oral comments will be accepted from September 3, 2019 through October 3, 2019, during regular business hours by contacting B. Joshua McGoldrick, Chief of Staff/General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma, 73104, (405) 815-5153, or Josh.McGoldrick@okcommerce.gov.

### **PUBLIC HEARING:**

A public hearing will be held on October 4, 2019, at 9:00 a.m. on, at Gallery 1-1, 900 North Stiles Avenue, Oklahoma City, Oklahoma. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

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

n/a

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

Copies of the proposed rules may be obtained without charge from the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma, by contacting B. Joshua McGoldrick at (405) 815-5153, or Josh.McGoldrick@okcommerce.gov.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement has been prepared and is available at the offices of the Oklahoma Department of Commerce (address below).

### **CONTACT PERSON:**

B. Joshua McGoldrick, Chief of Staff/General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma, 73104, (405) 815-5153 or Josh.McGoldrick@okcommerce.gov.

*[OAR Docket #19-710; filed 7-3-19]*

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

[OAR Docket #19-709]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 34. Feral Swine  
35:15-34-6 [AMENDED]

### AUTHORITY:

Oklahoma Constitution, Article 6, Section 31; State Board of Agriculture; 2 O.S. § 2-4; and 29 O.S. § 4-107.2

### ADOPTION:

May 14, 2019

### APPROVED BY GOVERNOR:

June 28, 2019

### EFFECTIVE:

Immediately upon Governor's approval

### EXPIRATION:

Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The State Board of Agriculture has determined that an emergency exists which requires an amendment to the Department's current rules relating to the licensure of feral swine sporting facilities in order to avoid serious prejudice to the public interest.

### GIST/ANALYSIS:

The proposed emergency rule amendment removes language restricting licensure of new feral swine sporting facilities.

### CONTACT PERSON:

Kambi Maddy, (405) 522-5803, kambi.maddy@ag.ok.gov

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

### SUBCHAPTER 34. FERAL SWINE

#### 35:15-34-6. Sporting facilities

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

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

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

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

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

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

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

(A) Name, mailing address, email address, and telephone number of the owner;

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

(C) Name, physical address, and county of the sporting facility;

(D) Legal description to the nearest quarter section and GPS coordinates, if available, of the sporting facility;

(E) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;

## Emergency Adoptions

(F) Whether the applicant has been convicted of a felony, misdemeanor, administrative, or civil violation of any natural resources requirements, including but not limited to wildlife, forestry, fisheries, environment, or animal health within the past three (3) years in Oklahoma or any other jurisdiction;

(G) Whether the property where the sporting facility is located is owned or leased;

(H) Driving directions from the nearest town; and

(I) Signature under oath "I certify under penalty of law this document, all attachments, and information submitted are to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

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

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

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

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

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

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

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

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

[OAR Docket #19-709; filed 7-2-19]

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

[OAR Docket #19-711]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 3. Manufacturers and Wine and Spirits Wholesalers

45:30-3-19. Procedures for determining top 25 brands [NEW]

45:30-3-20. Posting procedures for top 25 brands [NEW]

45:30-3-21. Example schedule for top 25 brands [NEW]

45:30-3-22. Brands no longer subject to top 25 distinction [NEW]

#### AUTHORITY:

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

#### ADOPTION:

June 12, 2019

#### APPROVED BY GOVERNOR:

June 27, 2019

#### EFFECTIVE:

Immediately upon Governor's approval

#### EXPIRATION:

Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature.

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### FINDING OF EMERGENCY:

This proposed emergency rule is necessary given the changes to occur through Senate Bill 608. Senate Bill 608 creates another method for pricing and distributing certain alcoholic beverages. The proposed rules are necessary to provide a procedural framework for licensees to comply with the provisions of Senate Bill 608.

#### GIST/ANALYSIS:

The gist of the rule changes is to provide for a modified line item price posting system for products determined to be in the top 25 in statewide sales in furtherance of the directives provided in Senate Bill 608.

#### CONTACT PERSON:

Steven Barker, Deputy Director and General Counsel, ABLE Commission, 3812 N. Santa Fe Avenue, Suite 200, Oklahoma City, OK 73118, 405-522-3050, steven.barker@able.ok.gov

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

### SUBCHAPTER 3. MANUFACTURERS AND WINE AND SPIRITS WHOLESALERS

**45:30-3-19. Procedures for determining top 25 brands**

(a) All Wine and Spirit Wholesalers licensed as of June 1, 2019 shall, no later than July 10, 2019, submit electronically to the Commission an affidavit stating the top thirty brands of wine and spirits by liters sold excluding sales to other wholesalers during the period of July 1, 2018 through June 30, 2019. Such affidavit shall provide the total liters of sales of each listed brand during the above stated twelve month period.

(b) All licensed Wine and Spirit Wholesalers shall, on the first day of the months of January, March, May, July, September, and November, electronically submit an affidavit to the ABLE Commission providing its sales records for its top thirty selling brands by liters during the previous 60 day time period, excluding sales to other wholesalers.

(c) The ABLE Commission shall provide a list denoting the top 25 brands of wine and spirits in liters sold in the State to all affected wholesalers and manufacturers on the 15<sup>th</sup> day of the months of February, May, August, and November. Such list shall be effective approximately 45 days after its publication, to begin on the first day of each quarter of the year.

(d) For purposes of this section, "brand" shall mean any name, group of letters, symbols, or combinations thereof that is used by a manufacturer to identify a specific product, and shall include all bottle sizes of that brand offered by the manufacturer. Products differing in class, type, age, flavor or proof shall be considered a separate brand.

**45:30-3-20. Posting procedures for top 25 brands**

(a) On the first day of the month following notice from the ABLE Commission of the next quarter's top 25 brand list, all manufacturers of such brands shall electronically submit to the ABLE Commission a price posting for its subject brands including an F.O.B. point within the United States. Such postings shall be effective on the first day of the month following its posting for sale to all licensed Wine and Spirit Wholesalers.

(b) On the fifteenth day of every month, every Wine and Spirit Wholesaler intending to sell any of the State's top 25 brands during the following month shall electronically submit a line item posting to the ABLE Commission in accordance to 37A O.S. 3-116.2. Such line item posting shall be effective on the first day of the following month.

**45:30-3-21. Example schedule for top 25 brands**

(a) The following example schedule is intended to provide manufacturers and Wine and Spirit Wholesalers with further guidance in complying with OAC 45:30-3-19 and 45:30-3-20:

(1) November 15, 2019, the ABLE Commission publishes a list of the top 25 wine and spirit brands in the State for 1<sup>st</sup> Quarter 2020 based on figures provided through affidavits of Wine and Spirit Wholesalers of sales for the prior 60 days;

(2) December 1, 2019 manufacturers of the top 25 brands submit to the ABLE Commission their price posting of their effected products to be effective January 1, 2020;

(3) December 15, 2019 Wine and Spirit Wholesalers intending to purchase and sell any of the top 25 brands submit their line item posting for such products to the ABLE Commission to be effective January 1, 2020;

(4) January 1, 2020 Wine and Spirit Wholesalers submit affidavit denoting top 30 selling brands for past 60 days.

**45:30-3-22. Brands no longer subject to top 25 distinction**

(a) In the event a brand is removed by the ABLE Commission from the Top 25 brand list for any given quarter, the manufacturer of such brand, upon notice from the ABLE Commission, may continue to sell its products in the State by electing a designated Wine and Spirit Wholesaler or continuing to sell to all Wine and Spirit Wholesalers.

(b) Any Wine and Spirit Wholesaler who has lawfully obtained inventory of a brand no longer among the Top 25 brands in the State may continue to sell such inventory until depleted pursuant to Oklahoma Attorney General Opinion 2018-6. Further, such sales shall be made at the designated Wine and Spirit Wholesalers line item price posting pursuant to the ABLE Commission declaratory ruling of September 21, 2018.

[OAR Docket #19-711; filed 7-3-19]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 32. RAILROADS**

[OAR Docket #19-707]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 1. General Provisions

165:32-1-13. Commission enforcement of blocked crossing citations

[NEW]

**AUTHORITY:**

Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution, Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq., 17 O.S. §§ 61 through 116.9, and 66 O.S. §§ 1 et seq.

**COMMENT PERIOD:**

June 14, 2019 to June 20, 2019

**PUBLIC HEARING:**

June 20, 2019

**ADOPTION:**

June 20, 2019

**APPROVED BY GOVERNOR:**

June 27, 2019

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

This rule was needed on an emergency basis in order to facilitate the requirements set for in House Bill No. 2472, a bill which was declared an emergency and will become effective July 1, 2019, and will be codified at Title 66 O.S. §190. Further, the emergency rule is necessary to protect the public health, safety and welfare.

# Emergency Adoptions

## GIST/ANALYSIS:

This rule is necessary to provide procedural guidance for implementing the new statutory changes which allow certain entities to issue citations to railroads regarding blocked crossings. The proposed changes include outlining the procedure for prosecuting violations of the new laws at the Commission court system. The rule includes procedures for filings, service, limitations on filings, and other guidance.

## CONTACT PERSON:

Michael P. Copeland, General Counsel, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73105, telephone (405) 522-1638; Darren Ferguson, Assistant General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73105, telephone (405) 522-5491.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:32-1-13. Commission enforcement of blocked crossing citations

(a) If a municipality, county sheriff or the Oklahoma Highway Patrol issues a citation under the authority of Title 66 O.S. § 190, and seeks enforcement of a penalty by the Commission, the issuing party shall file an enforcement action ("EN") with the Commission's Court Clerk. Such actions shall comply with the Commission's Rules of Practice (OAC 165:5-19-1).

(b) Notice and service requirements shall generally conform to the Commission's Rules of Practice (OAC 165:5-19-1), except that service of the verified complaint and citation for contempt shall be made by either personal delivery by a sheriff or deputy sheriff, or a person licensed to make service of process in the State of Oklahoma, or by mailing a copy of the verified complaint and contempt citation by certified mail, return receipt requested and delivery restricted to the respondent.

(c) If an EN is filed under the provisions of this subsection, the verified complaint and contempt citation shall be delivered to the legal counsel for the Commission's Transportation Division, in addition to any respondents.

(d) Any EN filed under the provisions of this subsection shall be exempt from Commission Court Clerk filing fees pursuant to Title 12 O.S. § 66.

(e) Any EN filed pursuant to Title 66 O.S. § 190 shall include train identification information and a copy of the citation issued by the municipality, county sheriff or the Oklahoma Highway Patrol attached as an exhibit to the initial filing.

(f) Any EN initiated under the provisions of this section must be filed within one (1) calendar year from the date of the alleged violation. Any untimely filed actions shall be dismissed.

(g) Exceptions to the recommendations of an administrative law judge may heard by the Commission sitting en banc, pursuant to OAC 165:5-13-5.

[OAR Docket #19-707; filed 7-1-19]

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

[OAR Docket #19-708]

## RULEMAKING ACTION:

EMERGENCY adoption

## RULES:

Subchapter 7. Educator Assessment  
218:10-7-1 [AMENDED]

## AUTHORITY:

Commission for Educational Quality and Accountability; 70 O.S. §6-180 et seq.

## ADOPTION:

June 12, 2019

## APPROVED BY GOVERNOR:

June 27, 2019

## EFFECTIVE:

Immediately upon Governor's approval

## EXPIRATION:

Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## FINDING OF EMERGENCY:

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

## GIST/ANALYSIS:

Emergency rules allows for teacher candidates to substitute an approved assessment of general knowledge score in place of a passing score on the Oklahoman General Education Test (OGET).

## CONTACT PERSON:

Daniel Craig, Executive Director, Office of Educational Quality and Accountability, 840 Research Parkway, Ste. 455, Oklahoma City, OK 73104, (405) 522-5399, Daniel.craig@oeqa.ok.gov

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

## SUBCHAPTER 7. EDUCATOR ASSESSMENT

### 218:10-7-1. Educator assessment regulations

#### (a) Examinees - initial licensure and certification.

- (1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the OEQA. The competency examination is made up of three components: The Oklahoma General Education Test (OGET) or an approved assessment of general knowledge, the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE) or an approved performance assessment measuring professional knowledge and skills.
- (2) See Appendix A for competency exam requirements by certification area and test codes.

#### (b) Examinees - additional certification.

(1) Individuals wishing to add a certification area to an existing teaching credential must successfully complete the Oklahoma Subject Area Test for the field of the desired certification.

(2) Individuals wishing to add a teaching certification area to an existing license or standard certificate in Speech Language Pathologist, School Nurse, School Psychometrist and/or School Psychologist must successfully complete the Oklahoma Subject Area Test and the Oklahoma Professional Teaching Exam or an approved performance assessment measuring professional knowledge and skills for the field of the desired certification.

(3) See Appendix A for competency exam requirements by certification area and test codes

**(c) Examinees - alternative placement program.**

(1) Individuals seeking a teaching license via the Alternative Placement Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test. A licensed teacher via the Alternative Placement Program seeking a standard certificate must successfully complete the Oklahoma Professional Teaching Exam or an approved performance assessment measuring professional knowledge and skills.

(2) See Appendix A for competency exam requirements by certification area and test codes.

**(d) Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state(s) and have successfully completed a competency examination used in the majority of other states or comparable customized exam, will be exempt from meeting the Oklahoma educator assessment requirements for the subject/grade levels most closely aligned with their out-of-state certification.

**(e) Examinees - testing conditions and requirements compliance.**

(1) If an examinee fails to comply with the conditions and requirements specified or referenced on the Certification Examinations for Oklahoma Educators Test website, including the Conditions of Test Participation, or take any prohibited actions, the test results may be voided, no refund will be issued, no portion of the testing fee can be applied toward the cost of any future test administrations and/or the examinee's registration may be cancelled.

(2) If an examinee's test score is found to be unverifiable by either the testing company or the OEQA, the examinee will be allowed one (1) retake under controlled conditions at no cost to the examinee.

*[OAR Docket #19-708; filed 7-1-19]*

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

*[OAR Docket #19-714]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

- Subchapter 3. General Provider Policies
  - Part 4. Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) Program/Child-Health Services  
317:30-3-65.12 [NEW]
  - Subchapter 5. Individual Providers and Specialties
  - Part 35. Rural Health Clinics  
317:30-5-355.1 [AMENDED]
  - 317:30-5-357 [AMENDED]
  - Part 37. Advanced Practice Nurse  
317:30-5-376 [AMENDED]
  - Part 75. Federally Qualified Health Centers  
317:30-5-664.1 [AMENDED]
  - Part 108. Nutrition Services  
317:30-5-1076 [AMENDED]
  - Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/US)  
317:30-5-1090 [AMENDED]
  - Part 112. Public Health Clinic Services  
317:30-5-1154 [AMENDED]
- (Reference APA WF # 19-03)**

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 1928 of Title 59 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; and the Oklahoma Health Care Authority Board

**ADOPTION:**

May 21, 2019

**APPROVED BY GOVERNOR:**

July 1, 2019

**EFFECTIVE:**

Immediately upon Governor's approval or July 1, 2019, whichever is later.

**EXPIRATION:**

Effective through September 14, 2020, 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 of a new rule, as well as certain revisions to its current policy, in order to protect the public health, safety, or welfare. The approval of the Applied Behavior Analysis (ABA) emergency rule would allow the Oklahoma Health Care Authority (OHCA) to align its Early Periodic Screening, Diagnosis and Testing (EPSDT) policy with the Centers of Medicare and Medicaid (CMS) guidance to ensure access of medically necessary therapies such as ABA for SoonerCare children with a diagnosis of Autism Spectrum Disorder (ASD). ABA is an intensive therapy that helps children with autism learn new skills, develop behaviors that are helpful, and decrease behaviors that are harmful or affect learning. Without the approval of these rule changes, the OHCA would not be able to expand access to care to SoonerCare children with ASD.

**GIST/ANALYSIS:**

These emergency revisions are necessary in order to establish coverage of medically necessary ABA services as a benefit under the EPSDT program for SoonerCare children who have been diagnosed with ASD.

**CONTACT PERSON:**

Sandra Puebla, 405-522-7270, Sandra.Puebla@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING EMERGENCY RULES ARE  
CONSIDERED PROMULGATED AND EFFECTIVE**

# Emergency Adoptions

UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2019, WHICHEVER IS LATER:

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 4. EARLY AND PERIODIC SCREENING, DIAGNOSIS, DIAGNOSTIC AND TREATMENT (EPSDT) PROGRAM/CHILD-HEALTH SERVICES

#### 317:30-3-65.12. Applied Behavior Analysis (ABA) services

(a) **Purpose and general provisions.** The purpose of this Section is to establish guidelines for the provision of ABA services under the EPSDT benefit.

(1) ABA focuses on the analysis, design, implementation, and evaluation of instructional and other environmental modifications to produce meaningful changes in human behavior. ABA services include the use of direct observation, measurement, and functional analysis of the relations between the environment and behavior. Common ABA-based techniques include, but are not limited to: discrete trial training; pivotal response training; and verbal behavioral intervention.

(2) ABA may be provided in a variety of settings, including home, community, or a clinical setting. It involves development of an individualized treatment plan that includes transition and aftercare planning, and significant family/caregiver involvement.

(3) At an initial assessment, target symptoms are identified. A treatment plan is developed that identifies the core deficits and aberrant behaviors, and includes designated interventions intended to address these deficits and behaviors and achieve individualized goals.

(4) Functional behavioral assessment (FBA) may also be a part of any assessment. An FBA consists of:

(A) Description of the problematic behavior (topography, onset/offset, cycle, intensity, severity);

(B) History of the problematic behavior (long-term and recent);

(C) Antecedent analysis (setting, people, time of day, events);

(D) Consequence analysis; and

(E) Impression and analysis of the function of the problematic behavior.

(5) ABA services require prior authorization [refer to Oklahoma Administrative Code (OAC) 317:30-3-31]. These services are designed to accomplish medically necessary management of severe and complex clinical conditions in which there is a realistic expectation that within a finite and reasonable period of time, the caregiver will be able to demonstrate knowledge and ability to independently and safely carry out the established plan of care.

(b) **Eligible providers.** Eligible ABA provider types include:

(1) Board Certified Assistant Behavior Analyst (BCaBA) - A bachelor's level practitioner who is certified by the nationally accredited Behavior Analyst Certification Board (BACB) and certified by the Oklahoma Department of Human Services' (DHS) Developmental Disabilities Services Division (DDS) to provide behavior analysis services under the supervision of a BCBA;

(2) Board Certified Behavior Analyst (BCBA) - A master's or doctoral level independent practitioner who is certified by the nationally accredited BACB and licensed by DHS DDS to provide behavior analysis services. A BCBA may supervise the work of BCaBA's implementing behavior analytic interventions; or

(3) Human services professional - A practitioner who is licensed or certified by the State of Oklahoma and by the nationally accredited BACB, and who is working within the scope of his or her practice, to include:

(A) A licensed physical therapist or physical therapy assistant;

(B) An occupational therapist, occupational therapy assistant, or occupational therapy aide;

(C) A licensed clinical social worker, licensed masters social worker, or licensed social work associate;

(D) A psychologist or health service psychologist;

(E) A speech-language pathologist or audiologist;

(F) A licensed professional counselor or licensed professional counselor candidate;

(G) A licensed marital and family therapist or licensed marital and family therapist candidate; or

(H) A licensed behavioral practitioner or licensed behavioral practitioner candidate.

(c) **Provider criteria.** To direct, supervise, and/or render ABA services, the following conditions shall be met.

(1) A BCBA shall:

(A) Be currently licensed by DHS DDS as a BCBA;

(B) Have no sanctions or disciplinary actions by DHS DDS or the BACB;

(C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and

(D) Be fully contracted with SoonerCare as a provider.

(2) A BCaBA shall:

(A) Be currently certified by DHS DDS as a BCaBA;

(B) Work under the supervision of a BCBA with the supervisory relationship documented in writing;

(C) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and

(D) Be fully contracted with SoonerCare as a provider.

(3) A human services professional shall:

- (A) Be currently licensed or certified by the State of Oklahoma, in accordance with Title 59 of the Oklahoma Statutes (O.S.), § 1928;
  - (B) Be currently certified by the nationally accredited BACB;
  - (C) Have no sanctions or disciplinary actions by the applicable state licensing board or the BACB;
  - (D) If working under supervision within the scope of his or her practice, have the supervisory relationship documented in writing;
  - (E) Have no current overpayment(s) due to SoonerCare, and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
  - (F) Be fully contracted with SoonerCare as a provider.
- (d) Medical necessity criteria for members under twenty-one (21) years of age.** ABA services are considered medically necessary when all of the following conditions are met:
- (1) The member is under twenty-one (21) years of age with a definitive diagnosis of an Autism Spectrum Disorder (ASD) from the following providers:
    - (A) Pediatric neurologist or neurologist;
    - (B) Developmental pediatrician;
    - (C) Licensed psychologist;
    - (D) Psychiatrist or neuropsychiatrist; or
    - (E) Other licensed physician experienced in the diagnosis and treatment of autism.
  - (2) A comprehensive diagnostic evaluation completed by one (1) of the above identified professionals must:
    - (A) Include a complete pertinent medical and social history, including pre-and perinatal, medical, developmental, family, and social elements; and
    - (B) Be based on criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) for ASD and/or may also include scores from the use of formal diagnostic tests such as the Autism Diagnostic Interview-Revised (ADI-R), Autism Diagnostic Observation Schedule-2 (ADOS-2), Childhood Autism Rating Scale (CARS) or other tools with acceptable psychometric properties. Screening scales are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
  - (3) There must be a reasonable expectation that the member will benefit from ABA. The member must exhibit:
    - (A) The ability/capacity to learn and develop generalized skills to assist with his or her independence; and
    - (B) The ability to develop generalized skills to assist in addressing maladaptive behaviors associated with ASD.
  - (4) The member is medically stable and does not require twenty-four (24) hour medical/nursing monitoring or procedures provided in a hospital or intermediate care facility for individuals with intellectual disabilities (ICF/IID).
  - (5) The member exhibits atypical or disruptive behavior within the most recent thirty (30) calendar days that significantly interferes with daily functioning and activities. Such atypical or disruptive behavior may include, but is not limited to:
    - (A) Impulsive aggression toward others;
    - (B) Self-injury behaviors; or
    - (C) Intentional property destruction.
  - (6) The focus of treatment is not custodial in nature (which is defined as care provided when the member "has reached maximum level of physical or mental function and such person is not likely to make further significant improvement" or "any type of care where the primary purpose of the type of care provided is to attend to the member's daily living activities which do not entail or require the continuing attention of trained medical or paramedical personnel.")
  - (7) It has been determined that there is no less intensive or more appropriate level of services which can be safely and effectively provided.
- (e) Intervention criteria.** Eligible providers must submit an initial prior authorization request to the Oklahoma Health Care Authority (OHCA) or its designated agent and meet the following SoonerCare intervention criteria for ABA services.
- (1) The intervention criteria includes a comprehensive behavioral and functional evaluation outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. In addition to completing the initial request form, providers will be required to submit a written assessment that will consist of the following:
    - (A) Information about relevant medical status, prior assessment results, response to prior treatment, and other relevant information gathered from review of records and past assessments.
    - (B) Information gathered from interview of family and/or caregivers, rating scales, and social validity measures to assess perceptions of the client's skill deficits and behavioral excesses, and the extent to which these deficits impede the daily life of the member and the family.
    - (C) Direct assessment and observation, including any data related to the identified problem behavior. The analysis of such data serves as the primary basis for identifying pretreatment levels of functioning, developing and adapting treatment protocols, and evaluating response to treatment and progress towards goals.
    - (D) Functional assessment of problem behavior that includes antecedent factors, skill deficits, and consequences contributing to the problem behavior. The treatment plan should address all three (3) areas, including antecedent interventions, teaching replacement skills, and modification of consequences.
  - (2) The ABA treatment will be time limited and must:
    - (A) Be child-centered and based upon individualized goals that are strengths-specific, family focused, and community based;

## Emergency Adoptions

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- (B) Be culturally competent and the least intrusive as possible;
  - (C) Clearly define in measurable and objective terms the specific target behaviors that are linked to the function of (or reason for) the behavior;
  - (D) Record the frequency, rate, symptom intensity/duration, or other objective measures of baseline levels;
  - (E) Set quantifiable criteria for progress;
  - (F) Establish and record behavioral intervention techniques that are appropriate to target behaviors. The detailed behavior analytic treatment plan utilizes reinforcement and other behavioral principles and excludes the use of methods or techniques that lack consensus about their effectiveness based on evidence in peer-reviewed publications;
  - (G) Specify strategies for generalization of learned skills;
  - (H) Document planning for transition through the continuum of interventions, services, and settings, as well as discharge criteria;
  - (I) Include parent(s)/legal guardian(s) in behavioral training techniques so that they can practice additional hours of intervention on their own. The treatment plan is expected to achieve the parent(s)/legal guardian(s) ability to successfully reinforce the established plan of care. Frequency of parental involvement will be determined by the treatment provider and listed on the treatment plan;
  - (J) Document parent(s)/legal guardian(s) participation in the training of behavioral techniques in the member's medical record. Parent(s)/legal guardian(s)' participation is critical to the generalization of treatment goals to the member's environment; and
  - (K) Ensure that recommended ABA services do not duplicate or replicate services received in a member's primary academic education setting, or provided within an Individualized Education Plan (IEP), Individualized Service Plan (ISP), or any other individual plan of care.
- (f) **ABA extension requests.** Extension requests for ABA services must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment and establish the following:
- (1) Eligibility criteria in (d) 1-6;
  - (2) The frequency of the target behavior has diminished since last review, or if not, there has been modification of the treatment or additional assessments have been conducted;
  - (3) If progress has not been measurable after two (2) extension requests, a functional analysis will be completed which records the member's maladaptive serious target behavioral symptom(s), and precipitants, as well as makes a determination of the function a particular maladaptive behavior serves for the member in the environmental context;

- (4) Appropriate consultations from other staff or experts have occurred (psychiatric consults, pediatric evaluation for other conditions) and interventions have been changed, including the number of hours per week of service or setting (higher level of care);
  - (5) Parent(s)/legal guardian(s) have received re-training on these changed approaches; and
  - (6) The treatment plan documents a gradual tapering of higher intensities of intervention and shifting to supports from other sources (i.e., schools) as progress occurs.
- (g) **Reimbursement Methodology.** SoonerCare shall provide reimbursement for ABA services in accordance with the Medicaid State Plan.
- (1) Payment shall be made to fully contracted BCBAs and human service professionals who are currently licensed and in good standing. Payment for ABA services rendered by any practitioner who is under supervision at the time the service is provided, shall be made to his or her licensed supervisor. If the rendering practitioner operates through an agency or corporate entity, payment may be made to that agency or entity.
  - (2) Reimbursement for ABA services is only made on a fee-for-services basis. The maximum allowable fee for a unit of service has been determined by OHCA to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider's actual billed charges, consistent with the provider's usual and customary charge to the general public for the service, or the maximum allowable per unit of service.
  - (3) Reimbursement shall only be made for services that have been prior-authorized by OHCA or its designee.
  - (4) Reimbursement for ABA services shall not be made to or for services rendered by a parent, legal guardian, or other legally responsible person.

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 35. RURAL HEALTH CLINICS

#### 317:30-5-355.1. Definition of services

The ~~RHC~~Rural Health Clinic (RHC) benefit package, as described in Title 42 of the Code of Federal Regulations (CFR), ~~part~~ §440.20, consists of two (2) components: ~~RHC Services and Other Ambulatory Services~~services and other ambulatory services.

- (1) **RHC services.** RHC services are covered when furnished to a member at the clinic or other location, including the member's place of residence. These services are described in this Section.
  - (A) **Core services.** As set out in ~~Federal Regulations~~ at 42 CFR §440.20(b), RHC "core" services include, but are not limited to:
    - (i) Physician's services;

- (ii) Services and supplies incident to a physician's services;
- (iii) Services of advanced practice registered nurses (APNs)(APRNs), physician assistants (PAs), certified nurse midwives (CNMs), or specialized advanced practice nurse practitioners;
- (iv) Services and supplies incident to the services of APNsAPRNs and PAs (including services furnished by ~~certified nurse midwives~~CNMs);
- (v) Visiting nurse services to the homebound;
- (vi) Clinical psychologist (CP) and clinical social worker (CSW) services;
- (vii) Services and supplies incident to the services of CPs and CSWs.

(B) **Physicians' services.** In addition to the professional services of a physician, and services provided by an APNAPRN, PA, and NMWCNM which would be covered as RHC services under Medicare, certain primary preventive services are covered under the SoonerCare RHC benefit. The services must be furnished by or under the direct supervision of an RHC practitioner who is a clinic employee:

- (i) ~~prenatal~~Prenatal and postpartum care;
- (ii) ~~screening~~Screening examination under the Early and Periodic Screening, ~~Diagnosis~~Diagnostic and Treatment (EPSDT) Program for members under ~~24~~twenty-one (21);
- (iii) ~~family~~Family planning services;
- (iv) ~~medically~~Medically necessary screening mammography and follow-up mammograms ~~when medically necessary.~~

(C) **Services and supplies "incident to".** Services and supplies incident to the service of a physician, ~~physician assistant, advanced practice nurse, clinical psychologist, or clinical social worker~~PA, APRN, CP, or CSW are covered if the service or supply is:

- (i) ~~a~~A type commonly furnished in physicians' offices;
- (ii) ~~a~~A type commonly rendered either without charge or included in the rural health clinic's bill;
- (iii) ~~furnished~~Furnished as an incidental, although integral, part of a physician's professional services; or
- (iv) Drugs and biologicals which cannot be self-administered or are specifically covered by Medicare law, are included within the scope of RHC services. Drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids are not billed separately.

(D) **Visiting nurse services.** Visiting nurse services are covered if:

- (i) ~~the~~The RHC is located in an area in which the Centers for Medicare and Medicaid Services (CMS) has determined there is a shortage of home health agencies;

- (ii) ~~the~~The services are rendered to members who are homebound;
- (iii) ~~the~~The member is furnished nursing care on a part-time or intermittent basis by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by or receives compensation for the services from the RHC; and
- (iv) ~~the~~The services are furnished under a written plan of treatment.

(E) **RHC encounter.** RHC "core" services (including preventive services, i.e., prenatal, EPSDT, or family planning) are part of an all-inclusive visit. A "visit" means a face-to-face encounter between a clinic patient and ~~an~~ RHC health professional (~~i.e., physicians, physician assistants, advanced practice nurses, certified nurse midwives, clinical psychologists and clinical social workers~~)(physicians, PAs, APRNs, CNMs, CPs, and CSWs). Encounters with more than one (1) health professional and multiple encounters with the same health professional that takes place on the same day and a single location, constitute a single visit except when the member, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment. Payment is made for one (1) encounter per member per day. Medical review will be required for additional visits for children. Payment is also limited to four (4) visits per member per month for adults.

(F) **Off-site services.** RHC services provided off-site of the clinic are covered as long as the RHC has a compensation arrangement with the RHC practitioner that SoonerCare reimbursement is made to the RHC and the RHC practitioner receives his or her compensation from the RHC. The ~~rural health clinic~~RHC must have a written contract with the physician and other RHC "core" practitioners that specifically identify how the ~~rural health clinic~~RHC services provided off-site are to be billed to SoonerCare. It is expected that services provided in off-site settings are, in most cases, temporary and intermittent, i.e., when the member cannot come to the clinic due to health reasons.

(2) **Other ambulatory services.** ~~A Rural Health Clinic~~An RHC must provide other items and services which are not "RHC services" as described in ~~(a)~~(1) of this Section, and are separately billable ~~to the SoonerCare program~~within the scope of the SoonerCare fee-for-service (FFS) contract. Coverage of services are based upon the scope of coverage under the SoonerCare program.

(A) Other ambulatory services include, but are not limited to:

- (i) ~~dental~~Dental services for members under ~~age 24~~the age of twenty-one (21);
- (ii) ~~optometric~~Optometric services;
- (iii) ~~clinical~~Clinical lab tests performed in the RHC lab, including the lab tests required for RHC certification;

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- (iv) ~~technical~~Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the RHC physician is included in the encounter rate);
- (v)  ~~durable~~Durable medical equipment;
- (vi)  ~~emergency ambulance transportation~~Transportation by ambulance (refer to OAC 317:30-5-335);
- (vii)  ~~prescribed~~Prescribed drugs;
- (viii)  ~~prosthetic~~Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (ix)  ~~specialized~~Specialized laboratory services furnished away from the clinic;
- (x)  ~~inpatient~~Inpatient services;
- (xi)  ~~outpatient~~Outpatient hospital services; and
- (xii) Applied behavior analysis (ABA) [refer to Oklahoma Administrative Code (OAC) 317:30-3-65.12].

(B) Payment is made directly to the RHC on an encounter basis for on-site dental services by a licensed dentist or optometric services by a licensed optometrist for members under ~~age 21~~the age of twenty-one (21). Encounters are billed as one (1) of the following:

- (i) **EPSDT dental screening.** An EPSDT dental screening includes oral examination, prophylaxis and fluoride treatment, charting of needed treatment, and, if necessary, x-rays (including two bite wing films). This service must be filed on claim form ADM-36-D for EPSDT reporting purposes.
- (ii) **Dental encounter.** A dental encounter consists of all dental treatment other than a dental screening. This service must be billed on the ADM-36-D.
- (iii) **Visual analysis.** Visual analysis (initial or yearly) for a child with glasses, or a child who needs glasses, or a medical eye exam. This includes the refraction and medical eye health evaluation. Glasses must be billed separately. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(C) Services listed in ~~(a)(2)(A)~~, (v)-(viii), of this Section, furnished on-site, require separate provider agreements with the ~~OHCA~~Oklahoma Health Care Authority (OHCA). Service item ~~(a)(2)(A)(iii)~~ does not require a separate contract when furnished on-site, however, certain conditions of participation apply. (Refer to OAC 317:30-5-361 for conditions.)

(D) Other ambulatory services provided off-site by independent practitioners (through subcontracting agreements or arrangements for services not available at the clinic) must be billed to the SoonerCare

program by the provider rendering the service. Independent practitioners must meet provider eligibility criteria and must have a current contract with the OHCA.

### 317:30-5-357. Coverage for children

Coverage for rural health clinic (RHC) services and other ambulatory services for children include the same services as for adults in addition to the following:

(1) ~~The receipt of an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) examination by a Medicaid eligible individual under age 21 renders that individual child eligible for all necessary follow up care, whether or not the medically necessary services are covered under the Medicaid.~~Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services are covered for eligible members under twenty-one (21) years of age in accordance with OAC 317:30-3-65. An EPSDT exam performed by an RHC must be billed on the appropriate claim form with the appropriate Preventative Medicine preventive medicine procedure code from the Current Procedural Terminology Manual (CPT) manual. If an EPSDT screening is billed, an RHC encounter should not be billed on the same day. Refer to OAC 317:30-3-47 through 317:30-3-54 for coverages under EPSDT. Refer to Oklahoma Administrative Code (OAC) 317:30-3-65 through 317:30-3-65.12.

(2) Under EPSDT, coverage is allowed for visual screenings and eyeglasses to correct visual defects. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(3) An EPSDT screening is considered a comprehensive examination. A provider billing the Medicaid program for an EPSDT ~~screening~~screening may not bill any other visits for that patient on that same day. It is expected that the screening provider will perform necessary treatment as part of the screening charge. Additional services such as tests, immunizations, etc., required at the time of screening may be billed independently from the screening.

(4) The administration fee for immunizations should be billed if provided at the same time as a scheduled EPSDT examination.

(5) Payment may be made directly to the RHC for the professional services of physician assistants performing EPSDT screenings within the certified RHC. The claim form must include the signature of the supervising physician.

## PART 37. ADVANCED PRACTICE NURSE

### 317:30-5-376. Coverage by category

Payment is made to ~~Advanced Practice Nurse~~advanced practice nurses as set forth in this Section.

(1) **Adults.** Payment for adults is made for primary care health services, within the scope of practice of ~~Advanced Practice Nurse~~advanced practice nurse and

within the scope of the Oklahoma Health Care Authority (OHCA) medical programs.

(2) **Children.** Payment for children is made for primary care health services, within the scope of practice of ~~Advanced Practice Nurse~~ advanced practice nurse, to ~~children and adolescents under 21~~ members under twenty-one (21) years of age, including EPSDT ~~Early and Periodic Screening, Diagnostic and Treatment (EPSDT) screening services and within the scope of the Oklahoma Health Care Authority medical programs.~~

(A) Payment is made to eligible providers for ~~Early and Periodic Screening, Diagnosis and Treatment of individuals under age 21~~ EPSDT services to members under twenty-one (21) years of age. Specific guidelines for the EPSDT program including the periodicity schedule are found in ~~OAC~~ Oklahoma Administrative Code (OAC) 317:30-3-65 through 317:30-3-65.11 ~~317:30-3-65.12.~~

(B) Comprehensive screening examinations are to be performed by a provider qualified under State law to furnish primary health care services.

(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

**PART 75. FEDERALLY QUALIFIED HEALTH CENTERS**

**317:30-5-664.1. Provision of other health services outside of the Health Center core services**

(a) If the Center chooses to provide other ~~Sooner Care~~ Oklahoma Medicaid State Plan covered health services which are not included in the Health Center core service definition in ~~OAC~~ Oklahoma Administrative Code (OAC) 317:30-5-661.1, the practitioners of those services are subject to the same program coverage limitations, enrollment, and billing procedures described by the OHCA, and these services (e.g., home health services) are not included in the PPS settlement methodology in OAC 317:30-5-664.12.

(b) Other medically necessary health services that will be reimbursed at the fee-for-service (FFS) rate include, but are not limited to:

- (1) ~~dental~~ Dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;
- (2) ~~eyeglasses (OAC 317:30-5-430 and OAC 317:30-5-450)~~ Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);
- (3) ~~elinical~~ Clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);
- (4) ~~technical~~ Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);
- (5) ~~durable~~ Durable medical equipment (refer to OAC 317:30-5-210);

(6) ~~emergency ambulance transportation~~ Transportation by ambulance (refer to OAC 317:30-5-335);

(7) ~~prescribed~~ Prescribed drugs (refer to OAC 317:30-5-70);

(8) ~~prosthetic~~ Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;

(9) ~~specialized~~ Specialized laboratory services furnished away from the clinic;

(10) ~~Psychosocial Rehabilitation Services~~ rehabilitation services ~~(refer to OAC 317:30-5-241.3)~~ (refer to OAC 317:30-5-241.3); and

(11) ~~behavioral~~ Behavioral health related case management services (refer to OAC 317:30-5-241.6); and

(12) Applied behavior analysis (ABA) (refer to OAC 317:30-3-65.12).

**PART 108. NUTRITION SERVICES**

**317:30-5-1076. Coverage by category**

Payment is made for ~~Nutritional Services~~ nutritional services as set forth in this ~~section~~ Section.

(1) **Adults.** Payment is made for six ~~(6)~~ (6) hours of medically necessary nutritional counseling per year by a licensed registered dietician. All services must be prescribed by a physician, physician assistant (PA), advanced practice ~~registered nurse~~ (APRN), or certified nurse midwife (CNW), and be ~~face-to-face~~ face-to-face encounters between a licensed registered dietitian and the member. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness. Nutritional services for the treatment of obesity is not covered unless there is documentation that the obesity is a contributing factor in another illness.

(2) **Children.** Payment is made for medically necessary nutritional counseling as described above for adults. Nutritional services for the treatment of obesity may be covered for children as part of the ~~EPSDT~~ Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. Additional services which are deemed medically necessary and allowable under federal regulations may be covered by the EPSDT benefit found at OAC 317:30-3-65 ~~and through 317:30-3-65.11~~ 317:30-3-65.12.

(3) ~~Home and Community Based Waiver Services~~ community-based services (HCBS) waiver for the Intellectually Disabled ~~intellectually disabled~~. All providers participating in the ~~Home and Community Based Waiver Services~~ HCBS waiver for the intellectually disabled program must have a separate contract with ~~OHCA~~ the Oklahoma Health Care Authority (OHCA) to provide ~~Nutrition Services~~ nutrition services under this program. All services are specified in the individual's plan of care.

(4) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for

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comparable services. Services which are not covered under Medicare should be billed directly to OHCA.

(5) **Obstetrical patients.** Payment is made for a maximum of six (6) hours of medically necessary nutritional counseling per year by a licensed registered dietitian for members at risk for or those who have been recently diagnosed with gestational diabetes. The initial consultation may be in a group setting for a maximum of two (2) hours of class time. Thereafter, four (4) hours of nutritional counseling by a licensed registered dietitian may be provided to the individual if deemed medically necessary, which may include a post-partum visit, typically done at six (6) weeks after delivery. All services must be prescribed by a physician, ~~physician assistant, advanced practice nurse or a certified nurse midwife~~ PA, APRN, or CNM and be face-to-face between a licensed registered dietitian and the member(s). Services must be solely for the prevention, diagnosis, or treatment of gestational diabetes.

### PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND URBAN INDIAN CLINICS (I/T/US)

#### 317:30-5-1090. Provision of other health services outside of the I/T/U encounter

(a) Medically necessary SoonerCare covered services that are not included in the I/T/U outpatient encounter rate may be billed outside the encounter rate within the scope of the SoonerCare fee-for-service (FFS) contract. The services will be reimbursed at the ~~fee for service~~ FFS rate, and will be subject to any limitations, restrictions, or prior authorization requirements. Examples of these services include, but are not limited to:

- (1)  ~~durable~~ Durable medical equipment [refer to Oklahoma Administrative Code (OAC) 317:30-5-210];
- (2)  ~~glasses~~ Eyeglasses (refer to OAC 317:30-5-431, 317:30-5-432.1 and 317:30-5-451);
- (3)  ~~ambulance~~ Transportation by ambulance (refer to OAC 317:30-5-335);
- (4)  ~~home~~ Home health [refer to OAC 317:30-5-546] (refer to OAC 317:30-5-546);
- (5)  ~~inpatient~~ Inpatient practitioner services (refer to OAC 317:30-5-1100);
- (6)  ~~non-emergency~~ Non-emergency transportation [refer to OAC 317:35-3-2] (refer to OAC 317:35-3-2);
- (7)  ~~behavioral~~ Behavioral health case management [refer to OAC 317:30-5-241.6] (refer to OAC 317:30-5-241.6);
- (8)  ~~psychosocial~~ Psychosocial rehabilitative services [refer to OAC 317:30-5-241.3] (refer to OAC 317:30-5-241.3); and
- (9)  ~~psychiatric~~ Psychiatric residential treatment facility services [refer to OAC 317:30-5, Part 6, Inpatient Psychiatric Hospitals] (refer to OAC 317:30-5-95 through 317:30-5-98); and
- (10) Applied behavior analysis (ABA) (refer to OAC 317:30-3-65.12).

(b) If the I/T/U facility chooses to provide other ~~SoonerCare~~ Oklahoma Medicaid State Plan covered health services which are not included in the I/T/U encounter definition, those service providers must be contracted with ~~OHCA~~ the Oklahoma Health Care Authority (OHCA) and bill for those services under their assigned provider number consistent with program coverage limitations and billing procedures described by the OHCA.

### PART 112. PUBLIC HEALTH CLINIC SERVICES

#### 317:30-5-1154. ~~CHD/CCHD~~ County health department (CHD) and city-county health department (CCHD) services/limitations

CHD/CCHD service limitations are:

- (1) Child ~~Guidance~~ guidance services (see OAC 317:30-3-65 through OAC 317:30-3-65.11 for specifics regarding program requirements) (refer to Oklahoma Administrative Code (OAC) 317:30-5-1023).
- (2) Dental services [OAC 317:30-3-65.4(7)] (refer to OAC 317:30-3-65.4(7) for specific coverage).
- (3) Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services (including blood lead testing and follow-up services), including blood lead testing and follow-up services (see refer to OAC 317:30-3-65 through OAC 30-3-65.11 317:30-3-65.12 for specific coverage).
- (4) Environmental investigations.
- (5) Family ~~Planning~~ planning and SoonerPlan ~~Family Planning~~ family planning services (see refer to OAC 317:30-5-12 for specific coverage guidelines).
- (6) Immunizations (adult and child).
- (7) Blood lead testing (see refer to OAC 317:30-3-65.4 for specific coverage).
- (8) Newborn hearing screening.
- (9) Newborn metabolic screening.
- (10) Maternity services (see refer to OAC 317:30-5-22 for specific coverage).
- (11) Public health nursing services.
- (12) Tuberculosis case management and directly observed therapy.
- (13) Laboratory services.
- (14) Targeted case management.

[OAR Docket #19-714; filed 7-5-19]

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

[OAR Docket #19-713]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties

Part 24. Certified Community Behavioral Health Clinics [NEW]  
317:30-5-263 [NEW]  
317:30-5-264 [NEW]  
317:30-5-265 [NEW]  
317:30-5-266 [NEW]  
317:30-5-267 [NEW]  
317:30-5-268 [NEW]

(Reference APA WF # 19-02)

**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; Section 223 of the Protecting Access to Medicare Act (PAMA)

**ADOPTION:**

May 21, 2019

**APPROVED BY GOVERNOR:**

July 1, 2019

**EFFECTIVE:**

Immediately upon Governor's approval or July 1, 2019, whichever is later.

**EXPIRATION:**

Effective through September 14, 2020, 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 of new rules to its policy in order to protect the public health, safety, or welfare. The Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) was awarded an initial two-year demonstration grant from the Centers of Medicare and Medicaid Services (CMS) to implement Certified Community Behavioral Health Clinics (CCBHC) pilots in Oklahoma, in order to expand access to a comprehensive set of mental health and addiction services. The CCBHC pilot program was initially set to end on March 31, 2019; however, the U.S. Senate passed the Services Investment and Accountability Act of 2019 (H.R. 1839) that included a short-term extension for the Community Mental Health Services Demonstration Program through June 30, 2019. Currently, there are three CCBHCs in Oklahoma that are responsible for directly providing nine types of behavioral health treatment services, with an emphasis on the provision of 24-hour care, utilization of evidence-based practices, care coordination, and integration with physical health. Without the approval of the rules, CCBHCs will be forced to stop providing these critical services to SoonerCare members when the extension period ends in June 2019.

**GIST/ANALYSIS:**

These emergency revisions are necessary in order to sustain the CCBHC project beyond its demonstration period in Oklahoma and continue the delivery of intensive community-based services for individuals with severe mental illness or addiction.

**CONTACT PERSON:**

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**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), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2019, WHICHEVER IS LATER:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 24. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS**

**317:30-5-263. Definitions**

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

"Advanced practice registered nurse (APRN)" means a registered nurse in good standing with the Oklahoma Board of Nursing, who has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing and has obtained professional certification through the appropriate national board recognized by the Oklahoma Board of Nursing. APRN services are limited to the scope of their practice as defined in Title 59 of the Oklahoma Statutes (O.S.) § 567.3a and corresponding rules and regulations at Oklahoma Administrative Code (OAC) 485:10.

"Behavioral health rehabilitation (BHR) services" means goal-oriented outpatient interventions that target the maximum reduction of mental and/or behavioral health impairments and strive to restore the members to their best possible mental and/or behavioral health functioning.

"Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services (HHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid.

"Certified alcohol and drug counselor (CADC)" means an individual with an Oklahoma certification as an alcohol and drug counselor.

"Certified behavioral health case manager (CM)" means an individual who is certified by the ODMHSAS as a behavioral health case manager pursuant to OAC, Title 450, Chapter 50.

"Certified community behavioral health clinics (CCBHC)" means a service delivery model designed to provide a comprehensive range of mental health and/or substance abuse rehabilitative services. Services are furnished by an interdisciplinary and mobile mental health team that functions interchangeably.

"CFR" means the Code of Federal Regulations.

"Facility-based crisis stabilization (FBCS)" means emergency psychiatric and substance abuse services aimed at resolving crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment.

"Family support and training provider (FSP)" means an individual who provides a system of care that is child-centered with the needs of the child and family dictating the types and mix of services provided, to assist in keeping the family together and preventing an out-of-home placement. FSP providers must:

- (A) Have a high school diploma or equivalent;
- (B) Be twenty-one (21) years of age and have a successful experience as a family member of a child or youth with serious emotional disturbance, or have lived experience as the primary caregiver of a child or youth who has received services for substance use

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disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child with Child Welfare/Child Protective Services involvement;

(C) Successfully complete family support training according to a curriculum approved by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) and pass the examination with a score of eighty (80) percent or better;

(D) Pass Oklahoma State Bureau of Investigation (OSBI) background check;

(E) Have treatment plans be overseen and approved by a licensed behavioral health professional (LBHP) or licensure candidate; and

(F) Function under the general direction of an LBHP, licensure candidate or systems of care team, with an LBHP or licensure candidate available at all times to provide back up, support, and/or consultation.

**"Illness/wellness management and recovery (IMR/WMR)"** means evidence-based practice models designed to help people who have experienced psychiatric symptoms. Elements include: developing personalized strategies for managing their mental illness and moving forward with their lives; setting and pursuing personal goals; learning information and skills to develop a sense of mastery over their psychiatric illness; and helping clients put strategies into action in their everyday lives.

**"Institution for mental disease (IMD)"** means a hospital, nursing facility, or other institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services, as defined by 42 CFR § 435.1010.

**"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** means a facility which primarily provides health-related care and services above the level of custodial care to intellectually disabled individuals but does not provide the level of care available in a hospital or skilled nursing facility.

**"Licensed behavioral health professional (LBHP)"** means any of the following practitioners:

(A) An allopathic or osteopathic physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current medical resident in psychiatry;

(B) A practitioner with a current license to practice in the state in which services are provided, within one (1) of the following areas of practice:

- (i) Psychology;
- (ii) Social work (clinical specialty only);
- (iii) Professional counselor;
- (iv) Marriage and family therapist;
- (v) Behavioral practitioner; or
- (vi) Alcohol and drug counselor.

(C) An advanced practice registered nurse, certified in a psychiatric mental health specialty, and licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) A physician assistant with a current license to practice and in good standing in the state in which services are provided and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

**"Licensure candidate"** means a practitioner who is actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if the board's supervision requirement is met but the individual is not yet licensed, to become licensed in a specific area of practice as outlined in (B)(i) through (vi) above. The supervising LBHP responsible for the member's care must:

(A) Staff the member's case with the candidate;

(B) Be personally available, or ensure the availability of an LBHP to the candidate for consultation while they are providing services;

(C) Agree with the current plan for the member;

(D) Confirm that the service provided by the candidate was appropriate; and

(E) Show that the member's medical record meet the requirements for reimbursement and the LBHP responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

**"OAC"** means Oklahoma Administrative Code, the publication authorized by 75 Oklahoma Statutes (O.S.), Sec. 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

**"OHCA"** means the Oklahoma Health Care Authority.

**"O.S."** means Oklahoma Statutes.

**"Peer recovery support specialist (PRSS)"** means an individual certified by ODMHSAS as a peer recovery support specialist pursuant to requirements found in OAC 450:53.

**"Program of All-Inclusive Care for the Elderly (PACE)"** means a home and community based acute and long-term care services program for eligible individuals who meet the medical requirements for nursing facility care and can be served safely and appropriately in the community.

**"Psychiatric residential treatment facility (PRTF)"** means a non-hospital facility contracted with the OHCA to provide inpatient psychiatric services to SoonerCare-eligible members under the age of twenty-one (21), as defined by 42 C.F.R. § 483.352.

**"Psychosocial rehabilitation services (PSR)"** means face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community.

improve self-care and social skills, and promote lifestyle change and recovery practices.

**"Qualified behavioral health aide (QBHA)"** means a behavioral health aide who must meet requirements described in OAC 317:30-5-240.3.

**"Registered nurse (RN)"** means an individual who is a graduate of an approved school of nursing and is appropriately licensed in the state in which he or she practices.

**"Serious emotional disturbance (SED)"** means a condition experienced by persons from birth to eighteen (18) who have a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria outlined in OAC 317:30-5-240.1.

**"Serious mental illness (SMI)"** means a condition experienced by persons age eighteen (18) and over that have a diagnosable mental, behavior, or emotional disorder that causes serious functional impairment that substantially interferes with or limits one or more major life activities. Specific diagnostic criteria is outlined in OAC 317:30-5-240.1.

**"System of care values"** means a philosophy, which embraces a family-driven, child-centered model of care that integrates and coordinates the efforts of different agencies and providers to individualize care in the least restrictive setting that is clinically appropriate.

**"Wellness recovery action plans (WRAP)"** means a self-management and recovery system designed to:

- (A) Decrease intrusive or troubling feelings and behaviors;
- (B) Increase personal empowerment;
- (C) Improve quality of life; and
- (D) Assist people in achieving their own life goals and dreams.

**"Wraparound approach"** means a team-based planning and implementation process to improve the lives of children with complex needs and their families by developing individualized plans of care. The key characteristics of the process are that the plan is developed by a family centered team, is individualized based on the strengths and culture of the child and his or her family, and is driven by needs rather than services.

### **317:30-5-264. Purpose**

Certified community behavioral health clinic is a service delivery model designed to provide a comprehensive range of mental health and substance use disorder services. Services are furnished by an interdisciplinary and mobile mental health team that functions interchangeably to provide the rehabilitation and treatment designed to enable the member to live successfully in the community.

### **317:30-5-265. Eligible providers**

(a) **Agency requirements.** Certified community behavioral health clinics are responsible for providing services to qualifying individuals within the provider's specified service area. Qualifying providers must:

- (1) Be certified by the ODMHSAS as a community mental health center under OAC 450:17 and have provider

specific credentials from ODMHSAS for CCBHCs (OAC 450:17-5-170 et seq.);

- (2) Be under the direction of a licensed physician;
- (3) Provide mobile crisis care twenty-four (24) hours, seven (7) days a week and have a twenty-four (24) hours, seven (7) days a week walk-in crisis clinic or a psychiatric urgent care, or have an agreement in place with a State-sanctioned alternative;
- (4) Actively use an Office of National Coordinator (ONC) certified Electronic Health Record (EHR) as demonstrated on the ONC Certified Health IT Product List;
- (5) Have a contract with a Health Information Exchange (HIE) and demonstrate staff use of obtaining and sending data through the HIE as well as policy stating frequency of use and security protocols; and
- (6) Report on encounter, clinical outcomes, and quality improvement. This includes meeting all federal and State specifications of the required CMS quality measure reporting, as well as performance improvement reports outlining activities taken to improve outcomes.

(b) **Interdisciplinary team.** CCBHCs will utilize an interdisciplinary team of professionals and paraprofessionals to identify an individual's strengths and needs, create a unified plan to empower a person toward self-management, and coordinate the individual's varied healthcare needs. CCBHC teams will vary in size depending on the size of the member panel and acuity of the member. The treatment team includes the member, the family/caregiver of child members, the adult member's family to the extent the member does not object, and any other person the member chooses. Each CCBHC shall maintain a core staff comprised of employed and, as needed, contracted staff, as appropriate to the needs of the member as stated in the member's individual service plan.

- (1) Teams shall at a minimum, include the following positions:
  - (A) Licensed psychiatrist;
  - (B) Licensed nurse care manager (registered nurse or licensed practical nurse);
  - (C) Consulting primary care physician, advanced practice registered nurse, or physician assistant;
  - (D) At least one (1) licensed behavioral health professional and may include additional LBHPs and licensure candidates [see OAC 317:30-5-240.3(a) and (b)];
  - (E) Certified peer recovery support specialist [see OAC 317:30-5-240.3(e)];
  - (F) Family support provider for child members [see OAC 317:30-5-240.3(f)]; and
  - (G) Certified behavioral health case manager II or certified alcohol and drug counselor [see OAC 317:30-5-240.3(c) and (h)].
- (2) Optional team members may include the following:
  - (A) Certified behavioral health case manager I [see OAC 317:30-5-240.3(h)];
  - (B) Licensed nutritionist;
  - (C) Occupational therapist; and/or
  - (D) Occupational therapist assistant.

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### **317:30-5-266. Covered services**

Certified community behavioral health clinics provide a comprehensive array of services that create access, stabilize people in crisis, and provide the needed treatment and recovery support services for those with the most serious and complex mental health and substance use disorders. CCBHCs integrate additional services to ensure an approach to health care that emphasizes recovery, wellness, trauma-informed care, and physical-behavioral health integration. Initial screening, assessment, and diagnosis must be completed in order to receive a covered service. Services must be medically necessary and recommended by an LBHP or licensure candidate (refer to OAC 317:30-5-240.3). Services are covered when provided in accordance with a person-centered and family-centered service plan. Coverage includes the following services:

#### **(1) Crisis assessment and intervention services.**

**(A) Service requirements.** This service is an immediately available service designed to meet the psychological, physiological, and environmental needs of individuals who are experiencing mental health and/or substance use disorder crises. Services include the following:

(i) Twenty-four (24) hours mobile crisis teams [see OAC 317:30-5-241.4(a) for service definition]. Reimbursement is triggered by the LBHP/licensure candidate crisis assessment;

(ii) Emergency crisis intervention service [see OAC 317:30-5-241.4(a) for service definition]; and

(iii) Facility-based crisis stabilization [see OAC 317:30-5-241.4(b) for service definition], provided directly by the CCBHC or by a State-sanctioned alternative.

**(B) Qualified professionals.** Twenty-four (24) hours mobile crisis intervention is provided by either a team consisting of an LBHP/licensure candidate and a CM II or CADC, or just an LBHP/licensure candidate. Emergency crisis intervention is provided by an LBHP/licensure candidate. Facility-based crisis stabilization is provided by a team, directed by a physician, and consisting of an LBHP/licensure candidate, licensed nurses, CM II or CADC, and PRSS staff.

#### **(2) Behavioral health integrated (BHI) services.**

**(A) Service requirements.** This service includes activities provided that have the purpose of coordinating and managing the care and services furnished to each member, assuring a fixed point of responsibility for providing treatment, rehabilitation, and support services. This service includes, but is not limited to:

(i) Care coordination for primary health care, specialty health care, and transitional care from emergency departments, hospitals, and PRTFs;

(ii) Ensuring integration and compatibility of mental health and physical health activities;

(iii) Providing on-going service coordination and linking members to resources;

(iv) Tracking completion of mental and physical health goals in member's comprehensive care plan;

(v) Coordinating with all team members to ensure all objectives of the comprehensive care plan are progressing;

(vi) Appointment scheduling;

(vii) Conducting referrals and follow-up monitoring;

(viii) Participating in hospital discharge processes; and

(ix) Communicating with other providers and members/family.

**(B) Qualified professionals.** This service is performed by an LBHP/licensure candidate, nurse, CM II or CADC, and/or PRSS staff.

#### **(3) Person-centered and family-centered treatment planning.**

**(A) Service requirements.** This service is a process in which the information obtained in the initial screenings and assessments are used to develop a treatment plan that has individualized goals, objectives, activities, and services that will enable the member to improve. For children assessed as SED with significant behavioral needs, treatment planning is a wraparound process consistent with System of Care values. A wraparound planning process supports children and youth in returning to or remaining in the community.

**(B) Qualified professionals.** This service is conducted by LBHPs/licensure candidates, nurses, CM II or CADC, and/or PRSS staff. Treatment planning must include the member and involved practitioners.

#### **(4) Psychotherapy (individual / group / family).**

**(A) Service requirements.** See OAC 317:30-5-241.2 for service definitions and requirements. Fee for service billing limitations do not apply.

**(B) Qualified professionals.** This service is conducted by an LBHP/licensure candidate.

#### **(5) Medication training and support.**

**(A) Service requirements.** This service includes:

(i) A review and educational session focused on the member's response to medication and compliance with the medication regimen and/or medication administration;

(ii) Prescription administration and ordering of medication by appropriate medical staff;

(iii) Assisting the member in accessing medications;

(iv) Carefully monitoring medication response and side effects; and

(v) Assisting members with developing the ability to take medications with greater independence.

**(B) Qualified professionals.** This service is performed by a registered nurse, APRN, or a physician assistant (PA) as a direct service under the supervision of a physician.

- (6) **Psychosocial rehabilitation services (PSR).**  
 (A) **Service requirements.** PSR services are face-to-face behavioral health rehabilitation (BHR) services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live independently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of curriculum-based education and skills training. This service is generally performed with only the member and the qualified provider, but may include a member and the member's family/support system when providing educational services from a curriculum that focuses on the member's diagnosis, symptom management, and recovery. A member who, at the time of service, is not able to cognitively benefit from the treatment due to active hallucinations, substance abuse, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery but does not constitute family therapy, which requires a licensed provider. Eligibility requirements and billing limits found in OAC 317:30-5-241.3 do not apply.  
 (B) **Qualified professionals.** This service is solely restorative in nature and may be performed by a behavioral health CM II, CADC, LBHP, or licensure candidate, following development of a service plan and treatment curriculum approved by an LBHP or licensure candidate. The behavioral health CM II and CADC must have immediate access to an LBHP who can provide clinical oversight and collaborate with the qualified PSR provider in the provision of services.
- (7) **Psychoeducation and counseling.**  
 (A) **Service requirements.** This service is designed to restore, rehabilitate, and support the individual's overall health and wellness. Services are intended for members to provide purposeful and ongoing psychoeducation and counseling that are specified in the individual's person-centered, individualized plan of care. Components include:  
 (i) Delivery of manualized wellness management interventions via group and individual work such as WRAP or IMR/WMR; and  
 (ii) Emotional support, education, resources during periods of crisis, and problem-solving skills.  
 (B) **Qualified professionals.** This service is provided by a licensed nurse, licensed nutritionist, or CM II or CADC within the scope of their licensure, certification, and/or training.
- (8) **Peer recovery support services.**  
 (A) **Service requirements.** See OAC 317:30-5-241.5(d) for service requirements.  
 (B) **Qualified professionals.** PRSS must be certified through ODMHSAS pursuant to OAC 450:53.
- (9) **Family support and training.**  
 (A) **Service requirements.** See OAC 317:30-5-241.5(c) for service requirements.  
 (B) **Qualified professionals.** Family support providers must be trained/credentialed through ODMHSAS.
- (10) **Screening, assessment, and service planning.**  
 (A) **Service requirements.** See OAC 317:30-5-241.1 for service requirements. Service billing limitations found in OAC 317:30-5-241.1 do not apply.  
 (B) **Qualified professionals.** Screenings can be performed by any qualified team member as listed in OAC 317:30-5-265(b). Assessment and service planning can only be performed by an LBHP or licensure candidate.
- (11) **Occupational therapy.**  
 (A) **Service requirements.** This service includes the therapeutic use of everyday life activities (occupations) with an individual or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings for the purpose of promoting health and wellness. Occupational therapy services are provided to those who have developed an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restrictions. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life.  
 (B) **Qualified professionals.** This service is solely restorative in nature and provided by a qualified occupational therapist or occupational therapist assistant who is contracted with the OHCA and appropriately licensed for the service to be provided (see OAC 317:30-5-295).  
 (C) **Coverage limitations.** In order to be eligible for SoonerCare reimbursement, occupational therapy services must be prior authorized and/or prescribed by a physician or other licensed practitioner of the healing arts, in accordance with State and federal law, including, but not limited to, OAC 317:30-5-296, OAC 317:30-5-1020, and 42 CFR § 440.110.

**317:30-5-267. Reimbursement**

- (a) In order to be eligible for payment, CCBHCs must have an approved provider agreement on file with the OHCA. Through this agreement, the CCBHC assures that OHCA's requirements are met and assures compliance with all applicable federal and State Medicaid law, including, but not limited to, OHCA administrative rules, ODMHSAS administrative rules, the Code of Federal regulations, and the Oklahoma State Medicaid Plan. These agreements are renewed annually with each provider.  
 (b) Reimbursement is made using a provider-specific PPS rate developed based on provider-specific cost report data. The PPS rate varies by category and level of service intensity and is

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paid when a CCBH program delivers at least one (1) CCBHC covered service, and when a valid individual procedure code is reported for the calendar month. Care coordination services do not trigger a PPS payment when billed alone in a calendar month. For reimbursement purposes, members are categorized as follows, and are assigned to special populations by the State:

- (1) Standard population;
  - (2) Special population 1. This population includes individuals eighteen (18) years of age and over with SMI and complex needs including those with co-occurring substance use disorder (SUD). Individuals between eighteen (18) and twenty-one (21) years of age can be served in either special population 1 or 2 depending on the member's individualized needs; and
  - (3) Special population 2. This population includes children and youth [ages six (6) through twenty-one (21)] with SED and complex needs, including those with co-occurring mental health and SUD;
- (c) Payments for services provided to non-established clients will be separately billable. Non-established CCBH clients are those who receive crisis services directly from the CCBHC without receiving a preliminary screening and risk assessment by the CCBHC and those referred to the CCBHC directly from other outpatient behavioral health agencies for pharmacologic management.
- (d) Additional reimbursement may be made to the CCBHC once in the same calendar month as the PPS payment for care coordination provided by CCBHC staff to members who are involved in a drug court or other specialty court program. Physician services provided to these members by the CCBHC are reimbursable using the SoonerCare fee schedule.
- (e) Reimbursement rates will be reviewed bi-annually and updated as necessary by the Medicare Economic Index (MEI).

### **317:30-5-268. Limitations**

- (a) The following are non-billable opportunities for CCBHCs serving eligible members:
- (1) Employment services;
  - (2) Personal care services;
  - (3) Childcare and respite services; and
  - (4) Care coordination.
- (b) The following SoonerCare members are not eligible for CCBHC services:
- (1) Members receiving care in an Institution for Mental Disease (IMD);
  - (2) Members residing in a nursing facility or ICF/IID;
  - (3) Inmates of a public correctional institution; and
  - (4) SoonerCare members being served by a PACE provider.
- (c) SoonerCare members receiving services from a CCBHC are not eligible for enrollment in a SoonerCare behavioral health home.

*[OAR Docket #19-713; filed 7-5-19]*

## **TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY**

*[OAR Docket #19-715]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 3. Non-Medical Eligibility Requirements  
317:35-5-26 [AMENDED]  
Part 7. Application and Eligibility Determination Procedures  
317:35-5-67 [NEW]

**(Reference APA WF # 19-04)**

### **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 435.916(d); 42 CFR 457.343; 42 CFR § 431.213; and 42 CFR § 431.231

### **ADOPTION:**

May 21, 2019

### **APPROVED BY GOVERNOR:**

July 1, 2019

### **EFFECTIVE:**

Immediately upon Governor's approval

### **EXPIRATION:**

Effective through September 14, 2020, 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 of rule revisions to its eligibility policy in order to protect the public health, safety or welfare. The agency currently conducts Public Assistance Reporting Information System (PARIS) data matches to check for members receiving duplicate benefits in two or more states, however, these revisions will allow a member's eligibility to be terminated if mail is returned to the agency as unforwardable, with address unknown, indicating that the member's whereabouts are unknown, and that the member could potentially not meet the state residence requirement.

### **GIST/ANALYSIS:**

These emergency revisions are necessary in order to expedite compliance with federal regulations at 42 CFR 435-916(d) which requires a prompt redetermination of eligibility whenever information is received about a change in a member's circumstance that may affect eligibility. These revisions will now allow a member's eligibility to be terminated if his or her mail is returned to the agency as unforwardable, with address unknown, and the Oklahoma Health Care Authority has made a reasonable but unsuccessful attempt to verify the member's current address. Residency in the state of Oklahoma is a federal requirement to receive medical assistance and returned mail with address unknown indicates that the state has received information about a potential change in residency. The state is required to act on that information by making a reasonable effort to locate the member. If the state is not able to verify a current address for the member, then the state must terminate eligibility and send a termination notice to the member's last known address. If the member's whereabouts become known within the eligibility period, eligibility will be reinstated.

### **CONTACT PERSON:**

Sandra Puebla, 405-522-7270, Sandra.Puebla@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. ELIGIBILITY AND COUNTABLE INCOME**

**PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS**

**317:35-5-26. Residence requirements; residents of public institutions; homeless persons; and residents of IHS, BIA or Tribal controlled dormitories**

(a) **Residence.** To be eligible for SoonerCare services, the applicant must be residing in the State of Oklahoma with intent to remain at the time the medical service is received. A durational residence requirement is not imposed.

(1) Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of Oklahoma residence.

(2) Oklahoma residence does not include transients or visitors passing through the state but does not preclude persons who do not have a fixed address if intent is established.

(3) Intent to remain or return is defined as a clear statement of plans to remain or return in addition to other evidence and/or corroborative statements of others.

(4) When a non-resident makes application for SoonerCare benefits, the local office provides services necessary to make available to the applicant any SoonerCare services for which he/she might be eligible from his/her state of residence. The local office contacts the state or county of the applicant's residence to explore possible eligibility for medical benefits from the state and to obtain information needed for the determination of medical eligibility for the services received while in Oklahoma.

(5) If a member's whereabouts are unknown, as indicated by the return of unforwardable agency mail, refer to OAC 317:35-5-67.

(b) **Individuals residing in institutions (correctional facilities and institutions for mental disease).** The SoonerCare program will only pay for services rendered to adults (21

through 64 years of age) who are inpatients in an institution for mental disease (IMD), juveniles in the custody of the Office of Juvenile Affairs who are inmates in a state-owned and operated facility, or inmates in a correctional facility, when these individuals are admitted as an inpatient to a hospital, nursing facility, juvenile psychiatric facility or an intermediate care facility for the mentally retarded and meet all other eligibility requirements.

(c) **Homeless individuals.** Individuals are not required to have a fixed address in order to be eligible for assistance. Individuals who lack a fixed or regular residence, who have temporary accommodations, i.e., supervised shelters, residence of other individuals, a hallway, bus station, car or other similar places, are considered as "homeless".

(d) **Individuals residing in IHS, BIA or Tribal controlled dormitories.** Individuals that reside in a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school are considered Oklahoma residents for SoonerCare eligibility purposes.

**PART 7. APPLICATION AND ELIGIBILITY DETERMINATION PROCEDURES**

**317:35-5-67. Returned mail**

If the member's whereabouts are unknown, as indicated by the return of unforwardable agency mail directed to the member, and the Oklahoma Health Care Authority has made a reasonable attempt to verify the member's current address, the member's eligibility will be discontinued. Notice thereof will be sent to the member by mail and by electronic notice. If the member's whereabouts become known within the eligibility period, eligibility shall be reinstated in accordance with Section 431.231(d) of Title 42 of the Code of Federal Regulations. If the member's whereabouts become known after the eligibility period, a new application will be required.

*[OAR Docket #19-715; filed 7-5-19]*



# Permanent Final Adoptions

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

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

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

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

## TITLE 218. OFFICE OF EDUCATIONAL QUALITY AND ACCOUNTABILITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-577]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

218:1-1-3 [AMENDED]

218:1-1-4 [AMENDED]

218:1-1-6 [AMENDED]

218:1-1-8 [AMENDED]

### AUTHORITY:

Office of Educational Quality and Accountability; 70 O.S. §3-116.1 et seq.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 24, 2018

### COMMENT PERIOD:

December 3, 2018 through January 9, 2019

### PUBLIC HEARING:

January 9, 2019

### ADOPTION:

February 13, 2019

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 15, 2019

### LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

### FINAL ADOPTION:

May 28, 2019

### EFFECTIVE:

September 16, 2019

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Adopted rules clarify language on office location and commission meetings and reflect state standards and policies for program accreditation to align with national accreditation.

### CONTACT PERSON:

Daniel Craig, Executive Director, OEQA, 840 Research Parkway, Suite 455, Oklahoma City, Ok 73104, 405-522-5399, Daniel.craig@oeqa.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 16, 2019:**

### 218:1-1-3. Official office

The OEQA ~~shall be located in Oklahoma County, is located at 840 Research Parkway, Suite 455, Oklahoma City, Oklahoma, 73104. The phone number is 405-522-5399. The office hours are from 8:00a.m. to 4:30 p.m. Central Time, Monday through Friday, except legal holidays.~~

### 218:1-1-4. Commission meeting, quorum

The Commission shall hold at least ~~four (4)~~ ~~six (6)~~ regular ~~monthly~~ meetings each calendar year at a time and place as shall be designated by the Commission. ~~Four of the voting members of the Commission shall be present at the meeting to constitute a quorum.~~ At the first regular meeting of each calendar year, the Commission shall appoint a vice-chair to serve in the absence of the Commission Chair.

### 218:1-1-6. Special meetings

Special meetings may be called by the Commission Chair and/or Executive Director by giving delivery of written or electronic notice to each member of the Commission with not less than forty-eight (48) hours notice. ~~A majority of voting members shall be present at the meeting to constitute a quorum of the Commission.~~

### 218:1-1-8. Agenda items

The Executive Director, in conjunction with the Commission Chair or vice-chair in the Commission Chair's absence, shall prepare an agenda for each meeting of the Commission. The agenda shall be filed and posted in accordance with the Oklahoma Open Meeting Act.

[OAR Docket #19-577; filed 6-7-19]

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

[OAR Docket #19-578]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Educator Preparation Program Accreditation

218:10-5-1 [AMENDED]

218:10-5-3 [AMENDED]

### AUTHORITY:

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

# Permanent Final Adoptions

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## SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 24, 2018

## COMMENT PERIOD:

December 3, 2018 through January 9, 2019

## PUBLIC HEARING:

January 9, 2019

## ADOPTION:

February 13, 2019

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 15, 2019

## LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

## FINAL ADOPTION:

May 28, 2019

## EFFECTIVE:

September 16, 2019

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Adopted rules clarify language on office location and commission meetings and reflect state standards and policies for program accreditation to align with national accreditation.

## CONTACT PERSON:

Daniel Craig, Executive Director, OEQA, 840 Research Parkway, Suite 455, Oklahoma City, Ok 73104, 405-522-5399, Daniel.craig@oeqa.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2019:**

## SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION

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

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

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

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

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

(5) Analysis of student satisfaction data;

(d) Prior to being accredited each institution must meet the eligibility requirements for accreditation and all requirements of the CEQA, and receive the approval of the Oklahoma State Regents for Higher Education, Hereafter referred to as the OSRHE, when applicable. An institution seeking first-time or initial accreditation must complete a two (2) part application process beginning with Part 1 to establish the status of the applicant and ending with Part 2 to establish accreditation eligibility. After acceptance of the Part 1 application by CAEP and/or CEQA, the educator preparation program, hereafter referred to as EPP, must submit the Part 2 application and schedule a site visit within a three (3) year period. The site visit must occur within five (5) years of the date of acceptance of the Part 1 application.

(1) **Part 1: Applicant Status.** The Part 1 application is completed by the EPP administrator, signed by the administrator and the president, and submitted to CAEP and/or CEQA.

(2) **Part 2: Accreditation Eligibility.** Upon acceptance of the Part 1 application, the EPP is granted applicant status. The EPP submits the following:

(A) Description of evidence demonstrating the capacity to prepare educators and/or other school professionals.

(B) Evidence that graduates/completers are eligible for an educator license issued by the state.

(C) A list of all programs offered for the preparation of P-12 educators and/or other school professionals.

(D) An accreditation plan for programs by site of operation including number of completers.

(E) A list of all of the EPP clinical educators (faculty).

(F) Information on applicable EPP characteristics, such as governance, regional accreditation, and Carnegie classification.

(G) Evidence of parity in resources, facilities, and finances in comparison to another professional field based preparation program of the EPP's choice.

(H) Copies of EPP-created assessments and scoring guides for unit-wide evaluation of candidate performance, not including proprietary assessments such as licensure examinations.

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

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

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

(A) Copy of the self-study;

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

**(3) OEQA personnel will establish an accreditation visit schedule that will adhere to CAEP/State accreditation timelines.**

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

- (A) All team members must have been trained by CAEP staff and/or their designee in the application of CAEP standards and on the process for evaluating programs for the CEQA.
- (B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:
  - (i) Three to six CAEP site visitors (for institutions seeking national accreditation)
  - (ii) State site visitors appointed by the OEQA including: One P-12 site visitor; one site visitor from higher education who is a member of an educator preparation unit. For accreditation of private institutions the site visitor shall be from a private institution; for public institutions this site visitor shall be from a public institution; One site visitor from the OEQA serving as State Consultant; One additional at-large site visitor;
  - (iii) For any institution requesting accreditation of a career technology program(s) an additional site visitor may be recommended by the State Director of Career and Technology Education.
  - (iv) The OEQA may invite observers representing the Oklahoma State Regents for Higher Education, Oklahoma State Department of Education, Oklahoma Department for Career and Technology Education, professional organizations, and the community-at-large.
  - (v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.
  - (vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.
  - (vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

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

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

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

- (i) CAEP site visitors as determined by CAEP (for CAEP accredited institutions);
- (ii) State site visitors which will number one less than the CAEP representatives;
- (iii) The OEQA shall collaborate with the director of educator preparation at the institution being reviewed regarding the state team representation;
- (iv) The OEQA may invite observers representing Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education may nominate a site visitor for any institution requesting accreditation of career and technology program(s);
- (v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.
- (vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.
- (vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(D) Accreditation teams for non-CAEP accredited institutions shall be composed of state site visitors.

(E) CEQA members and OEQA appointees who are involved in an unit or program evaluation and/or accreditation, must complete performance-based training prior to voting and/or participating in any accreditation decisions.

**(5) Logistics for CAEP/State accreditation visits shall adhere to the CAEP and State guidelines.**

- (A) The accreditation process will include
  - (i) Successful completion of application (for first and initial accreditation)
  - (ii) Submission of Self-Study Report containing evidence of meeting accreditation standards and state requirements
  - (iii) Response to the Formative Feedback Report
  - (iv) On-site visit

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- (B) The completed accreditation review team report will be presented to the CEQA and CAEP (as applicable).
- (C) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.
- (6) **Preparation of the team report.** The accreditation review team work will culminate in preparation of a report outlining the findings of the team following CAEP guidelines. The report will reflect the team consensus on the review.
- (A) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include an evaluation of the completeness, quality, and strength of evidence for each standard and state requirement.
- (B) The completed CAEP and OEQA reports will follow the CAEP timelines for submission; and
- (C) The summary evaluation will be presented to the CEQA for determination of final state accreditation decision. For CAEP accredited institutions, final accreditation decisions will be made after CAEP has forwarded its accreditation decision to the CEQA.
- (7) **Final action.** Final action on the reports and institutional accreditation will proceed according to CAEP ~~and~~ state guidelines and policies.
- (A) Final action by the CEQA may include the following actions:
- (i) ~~**Initial Accreditation.** An educator preparation program seeking accreditation for the first time receives one of four accreditation decisions.~~
- (I) ~~Accreditation for seven (7) years is granted if the EPP meets all of the accreditation standards and required components, even if areas for improvement (AFIs) are identified.~~
- (II) ~~Accreditation with stipulations is granted if an EPP receives one (1) stipulation on a non-required component(s) and all standards are met. A targeted response to the stipulations(s) must be submitted to the Accreditation Council and/or CEQA for review by the end of the second year following the application of the stipulation. Failure to submit a response to the stipulation within a two-year (2) time frame results in denial. Failure to correct the condition leading to the stipulation within the specified two-year (2) period results in denial.~~
- (III) ~~Provisional accreditation for two (2) years is granted if an EPP has one (1) stipulation on one (1) required component. A target response to the stipulations(s) must be submitted to the Accreditation Council and/or CEQA for review by the end of the second year following the application of the stipulation, and the EPP must undergo a targeted site visit and submit~~

~~an interim self study report. Failure to submit a response to the stipulation within a two-year (2) time frame results in automatic denial. Failure to correct the condition leading to the stipulation within the specified two-year (2) period results in denial.~~

~~(IV) Denial of accreditation occurs when the EPP has stipulations on two or more required components, or if the EPP fails to meet one or more of the CAEP Standards. In a case where accreditation is denied, the EPP no longer holds the status of CAEP and/or state accreditation eligible. The EPP can begin the application process after one (1) calendar year from the date of the final decision.~~

~~(iii) **Continuing Accreditation.** An EPP seeking continuing accreditation may receive one of the following four accreditation decisions.~~

~~(I) Accreditation is granted for seven (7) years is granted if the EPP meets all of the accreditation standards and required components, even if areas for improvement (AFIs) are identified.~~

~~(Hij) Accreditation with stipulations~~**Accreditation with Stipulations** is granted if an EPP receives one (1) or more stipulations on non-required components(s) and all standards are met. A targeted response to the stipulations(s) must be submitted to the Accreditation Council and/or CEQA for review by the end of the second year following the application of the stipulation. Failure to submit a response to the stipulation within a two-year (2) time frames results in automatic revocation. Failure to correct the condition leading to the stipulation within the specified two-year (2) period results in revocation.

~~(HHii) Probationary accreditation~~**Probationary Accreditation** is granted for two (2) years when an EPP does not meet one (1) of the CAEP Standards or fails to meet not more than one required component under any one (1) standard. If the probationary status is for failing to meet one of the CAEP standards, a targeted response to the stipulations(s) must be submitted to the Accreditation Council and/or CEQA for review by the end of the second year following the application of the stipulation, and the EPP must undergo a targeted site visit and submit an interim self-study report. If the probationary status is for failing meet not more than one required component, a targeted response to the stipulations(s) must be submitted to the Accreditation Council and/or CEQA for review by the end of the second year following the application of the stipulation, and the EPP must undergo a document review. Failure to submit a response to the stipulation within a two-year (2) time frame results in revocation. Failure to correct

the condition leading to the stipulation within the specified two-year (2) period results in revocation. ~~(IV-iv) Revocation of accreditation occurs if an EPP does not meet two (2) or more of the CAEP Standards. In a case where accreditation is revoked, the EPP can begin the application process after one (1) calendar year from the date of the final decision.~~ Revocation (for Continuing) or Denial (for Initial) of accreditation occurs if an EPP does not meet two (2) or more of the accreditation standards. In a case where accreditation is revoked, the EPP can begin the application process after one (1) calendar year from the date of the final decision. All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the CAEP or CEQA decision, as to the revocation of accreditation of the unit and programs. Within 30 days of receipt of the CEQA decision, the institution provides to the OEQA the names, admission dates, and majors of all students admitted to their program at the time of the decision. Institutions that lose their state accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(B) All final actions shall be reported annually in the OEQA annual report.

(8) **Appeals Board.**

(A) ~~For appeals related to national accreditation the CAEP Appeals Board shall consider the recommendations of the CAEP Commission of the Accreditation Council; hereafter referred to as the Council.~~ The appeals process for National Accreditation will follow the guidelines and criteria contained in the CAEP Appeals Policy;

(B) For appeals related to program(s) and state accreditation the CEQA shall consider the recommendation of the CEQA Appeals Board whose membership shall include:

(C) Membership of CEQA Appeals Board shall be:

- (i) CEQA chair. The CEQA Chair shall be the Chair of the Appeals Board;
- (ii) Representative from OEQA with State Consultant experience;
- (iii) Program subject matter and/or standards expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;
- (iv) One P-12 school classroom teacher;
- (v) One member trained as a site visitor (when applicable);
- (vi) One educator preparation faculty representative; and
- (vii) One representative from the arts and sciences faculty or from school administration.

(9) **Appeal of an accreditation adverse action.**

(A) An educator preparation program may formally appeal an adverse action (denial or revocation

of accreditation) ~~to CAEP or CEQA~~ by indicating its intent in writing within 15 days of receipt of its accreditation letter and action report. The program shall submit its petition within 30 days after its letter of intent.

(B) ~~CAEP or CEQA~~ may affirm, amend, or reverse the accreditation decision. The decisions of ~~CAEP and~~ the CEQA are final. While the appeal is pending, the educator preparation program's prior status remains in effect.

(C) The basis for appeal of an accreditation adverse action is:

- (i) ~~CAEP/OEQA~~ procedures not followed by visitor teams, Commissioners, ~~the Council,~~ or ~~CAEP/OEQA~~ staff;
- (ii) A conflict of interest or prejudice by members of visitor teams, Commissioners, ~~the Council,~~ ~~CAEP/~~ or OEQA staff that influenced the accreditation decision;
- (iii) The accreditation decision is not supported adequately or is contrary to facts presented and known at the time of the decision;

(10) **Reconsideration of a stipulation or a probationary accreditation decision.**

(A) An educator preparation program may ask for reconsideration of a ~~CAEP or~~ CEQA stipulation or conditional term decision. An educator preparation program may, by a formally documented petition, request reconsideration of any decision that cites a stipulation or grants a conditional term for accreditation. ~~CAEP/OEQA~~ staff will undertake a preliminary review of petitions with the educator preparation program and take the request to the ~~CAEP Council Chair and Vice Chairs or~~ CEQA chair to determine whether to submit the request to the ~~full Council or to~~ the CEQA.

(B) The basis for reconsideration of a stipulation or a conditional term decision is:

- (i) ~~CAEP/OEQA/CEQA~~ procedures not followed by visitor teams, Commissioners, ~~the Council,~~ or ~~CAEP/OEQA~~ staff;
- (ii) A conflict of interest or prejudice by members of visitor teams, Commissioners, ~~the Council~~ or ~~CAEP/OEQA~~ staff that influenced the accreditation decision;
- (iii) The accreditation decision is not supported adequately or is contrary to facts presented and known at the time of the decision.

(11) **Cost of review.**

(A) If the appeal leads to an affirmation of the CEQA original decision, the appellant will be liable for the expenses of the CEQA Appeals Board, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.

(B) If the CEQA Appeals Board finds in favor of the institution, the CEQA will be liable for expenses of the AB and second accreditation review team. All

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expenses will be reimbursed according to state travel reimbursement guidelines.

### 218:10-5-3. Specific state requirements for program accreditation

(a) The following requirements apply to both undergraduate and graduate programs. The governance and administration of the total educator preparation program standard is based on the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and continuously evaluating and developing educator preparation programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of educator preparation as one of its functions. The governing unit membership and responsibilities include the following:

- (1) Membership on the educator preparation governing unit shall be defined by written policy to include:
  - (A) A majority of the members who have a minimum of three years teaching experience in public schools;
  - (B) A majority of the members in the governance unit who are currently teacher education faculty members;
  - (C) Some faculty members who shall represent the arts and sciences;
  - (D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and
  - (E) A clearly defined process whereby faculty members and administrators become members and the terms of office.
- (2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:
  - (A) Responsibilities of the officers of the unit;
  - (B) Responsibilities of the unit's standing committees; and
  - (C) Responsibilities in the following areas as they are related to educator preparation:
    - (i) Admission/retention in educator preparation;
    - (ii) Field experience and student teaching (admission and placement);
    - (iii) Development of courses and program curricula; and program review, evaluation and planning.
- (3) Program review, evaluation and revision responsibilities include:
  - (A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

(B) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and

(C) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:

- (i) Educator preparation faculty and arts and science faculty;
- (ii) Graduates of the programs;
- (iii) Students currently in the program;
- (iv) Teachers and administrators from the public schools;
- (v) Parents of P-12 students and business and community leaders who are actively involved in assisting P-12 schools.

(4) Documentation related to the budget-making process and level of financial support shall include the following:

- (A) A clearly defined budget-making process for all teacher education programs; and
- (B) An analysis showing that the institution's financial support for programs in educator preparation are maintained at a level appropriate for a professional preparation program.

(b) Educator preparation faculty workload policies, including class-size and online course delivery, should allow faculty members to be effectively engaged in teaching, scholarship, assessment, advisement, collaborative work in P-12 schools, and service. Faculty loads for teaching on campus and online generally do not exceed 12 hours for undergraduate teaching and nine hours for graduate teaching per semester or the equivalent. Supervision of clinical practice does not generally exceed 18 candidates for each full-time equivalent faculty member per semester or the equivalent.

(c) Candidate-related standards are to be consistent with accreditation standards.

(d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.

(1) The conceptual framework application for state initial accreditation.

(2) The conceptual framework shall consist of:

- (A) The program's philosophy, purposes, professional commitments and dispositions;
- (B) A knowledge base that provides the foundation for the framework;
- (C) Performance expectations for candidates that align with professional, state and institutional standards; and
- (D) A system by which candidate performance is regularly assessed.

(e) The following guidelines are to be used to collect and maintain data on each institution's educator preparation program:

- (1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within

the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.

(2) The institution shall establish procedures to inform the public regarding the educator preparation program and to solicit and receive public input.

(3) The self-study shall be accessible to any interested party under the Oklahoma Open Records Act.

(4) The submitted institutional plan must be approved by the institution's governing board.

(5) Annual reviews and reports indicating program changes.

(f) The following policies, procedures and guidelines are used to direct the content and candidates' experiences of each institution's teacher preparation program.

(1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.

(2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.

(3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.

(4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.

(5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.

(6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.

(7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the CAEP professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.

(8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; and classroom safety and discipline issues.

(9) Teacher candidate coursework or training includes the use of digital and other instructional technologies to effectively maximize student learning.

(10) Early childhood, elementary education and special education candidates; training includes research-based instructional strategies for instruction, assessment and

intervention for literacy development for all students, including advanced readers, typically developing readers and struggling readers who are coping with a range of challenges, including, but not limited to, English learners and learners with handicapping conditions and learning disabilities (including dyslexia).

(11) ~~Effective September 1, 2015 teacher~~ Teacher candidates must complete the equivalent of twelve (12) weeks of student teaching and have a minimum of 60 hours of diverse field experiences prior to their student teaching ~~experience~~ internship.

(12) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.

(13) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.

(14) Instruction integrates pedagogical competencies or skills with experiences in the school setting.

(15) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.

(16) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.

(17) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion adhering to all rules and regulations established by the Oklahoma State Department of Education.

(18) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.

(19) Effective September 1, 2015 mentor teachers are required to have minimum of three years of teaching experience in the area in which they are certified.

(g) The following guidelines are to be used to facilitate the professional learning of faculty: Teacher education faculty continue their professional learning during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members' ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.

(h) The following policies are to be used to evaluate individual program areas at each institution:

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(1) The institution shall submit program reviews for each required program area based upon the CAEP/and/or State policies, guidelines and accreditation schedule.

(2) Following the completion of each program evaluation, the institution will receive written notification of each program's status. Recognition decisions will include the following categories: recognized, recognized with conditions, recognized with probation, further development required, and not recognized.

(3) If the program is recognized, it will retain its status through the semester and year of the institution's next accreditation visit. To retain recognition, another program report must be submitted before that review.

(4) If the program is recognized with conditions, a report addressing the conditions to recognition must be submitted within 18 months of the date of the status report. The report must address the conditions specified by the reviewers. Once acceptable data has been submitted, the condition(s) will be removed. If the program does not submit acceptable information within the designated time frame, the decision reverts to "not recognized."

(5) If the program decision is recognized with probation or further development required, a revised report addressing the issues identified by the reviewers must be submitted within 12 months, or the unit may submit a new program report for recognition within 12 months. If the revised report adequately addresses the concerns cited by reviewers, the program decision will be changed to "recognized" or "recognized with conditions." If the program is unsuccessful after two attempts, the program status will be changed to "not recognized."

(6) A program can receive a decision of "not recognized" only after two submissions are unsuccessful in reaching either "recognized" or "recognized with conditions." If the program is not recognized, a revised report addressing unmet standards may be submitted within 12 months of the date of the recognition report. [This report will be sent to the original team if possible.] If the program does not receive a recognized decision within 12 months, admission of new candidates will not be allowed. The unit may elect to submit a new program report for recognition within 12 months. [This report will be sent to a new team of reviewers].

(7) Programs which are required to submit through CAEP and receive an initial decision of "recognized with probation" or "further development required" may apply to OEQA for state recognition and thus recommend teacher candidates for certification under the following conditions:

(A) The program must have an aggregated pass rate of all candidates on the Oklahoma Subject Area Test (OSAT) of 80% or more over a three year period. An application for program recognition must be submitted to OEQA containing basic program information as well as current recognition status and future submission deadlines; however an additional review will not be required.

(B) Institutions must submit a revised program report according to applicable CAEP/SPA or OEQA guidelines as appropriate addressing concerns cited in the review. If the revised report is not recognized, the unit must submit additional revised reports according to guidelines. The unit must exhaust all available CAEP options for revision.

(C) Programs which do not meet the required 80% pass rate on the OSAT may apply to OEQA for state recognition only after the unit has exhausted all available CAEP options for revision. The application for state recognition must address concerns cited by reviewers in the final report.

(D) Programs receiving state recognition under these conditions will maintain recognition until the submission period prior to the unit's next scheduled accreditation visit, at which time the unit will be expected to submit a program review to CAEP or OEQA, as appropriate.

(8) Programs submitted through CAEP and receive a decision of not recognized based solely for lack of data/low number of completers, may be state recognized with conditions until the submission period prior to the unit next scheduled accreditation visit, at which time the unit will be expected to submit a program review to CAEP.

(9) Units may receive conditional approval for new programs. These programs must undergo reviews as outlined in the New Certification Program Procedures for Established Units guidelines before receiving full recognition. State recognition will be retained through the semester and year of the unit's next accreditation visit. Programs with national Specialized Professional Association's are required to submit to CAEP within 18 months of receiving a recognized with conditions decision.

(10) Programs that do not comply with the procedures detailed in items (h)3-7 will no longer be eligible to be approved by CAEP and/or the State to recommend candidates for licensure and certification.

(11) An institution with a non-compliant program may apply to the CEQA for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

(i) Gifted Education and Elementary Math Specialist programs, requiring no more than eighteen hours of graduate level coursework, designed as endorsement programs for certified educators are submitted to OEQA for process approval.

[OAR Docket #19-578; filed 6-7-19]

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### TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 35. LAKE RULES

[OAR Docket #19-514]

RULEMAKING ACTION:  
PERMANENT final adoption

**RULES:**

- Subchapter 3. General Provisions  
300:35-3-12. [AMENDED]
- Subchapter 5. Boating Safety Rules  
300:35-5-11. [AMENDED]
- Subchapter 7. Vessels  
300:35-7-12. [AMENDED]
- Subchapter 21. Administration of Rules and Hearings  
300:35-21-3. [AMENDED]  
300:35-21-6. [AMENDED]  
300:35-21-7. [AMENDED]
- Subchapter 23. Four-Wheel Vehicles, Off-Road Vehicles and All Terrain Vehicles  
300:35-23-8. [AMENDED]

**AUTHORITY:**

Grand River Dam Authority; 82 O.S. 2011 § 861A(B)(1), 82 O.S. Supp. 2012 § 863.2(B).

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 17, 2018

**COMMENT PERIOD:**

January 16, 2019 through February 15, 2019

**PUBLIC HEARING:**

February 19, 2019

**ADOPTION:**

March 13, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 19, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments modify the procedures for service of a Notice of Violation and a Final Order. Language regarding alcoholic beverages on Grand River Dam Authority land has been revised to correlate with Oklahoma state law. Additionally, other general clarifications have been made. The authority for the rule amendments are found at 82 O.S. § 875.

**CONTACT PERSON:**

Tamara Jahnke, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-5545.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. GENERAL PROVISIONS**

**300:35-3-12. Health and sanitation**

- (a) All sanitary rules, regulations, and laws shall be complied with prior to the granting or renewal of any GRDA permit.
- (b) In the interest of public health, sanitation and safety, there shall be no camping on GRDA's lands except in a designated camping area.
- (c) Bottles, Styrofoam goods, cans, garbage, rubbish, refuse, debris, wreckage, bilge water containing oil or grease, or materials used in the process of cleaning the outer surfaces of vessels, or any other material of any kind shall not be thrown

into or released upon the lakes or deposited or dumped upon the shores of the lakes or upon any land under the jurisdiction of GRDA.

(d) No septic tank, lateral line or lagoon shall be placed on GRDA property. No sewage shall be disposed of in the waters or on GRDA property. No person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets.

(e) The preparation and marking of beaches shall be in such manner as to provide reasonable safety in their use. Commercial beaches shall be provided with adequate and sanitary dressing rooms, toilets, showers and other necessary accessories for public convenience and safety.

**SUBCHAPTER 5. BOATING SAFETY RULES**

**300:35-5-11. ~~Persons using paddle-~~  
~~boards~~Paddleboards, canoes and kayaks**

Persons using Paddleboards, canoes or kayaks on the waters of GRDA must wear a life jacket at all times. Paddleboards, canoes, and kayaks shall not be used between the hours of one-half hour before sunset and one-half hour after sunrise. Canoes and kayaks under 17 feet long, and all Paddleboards, canoes, and kayaks shall stay within one-hundred fifty (150) feet of the shoreline unless in a no wake cove, hollow or creek.

**SUBCHAPTER 7. VESSELS**

**300:35-7-12. ~~Duck Creek, and Woodard Hollow, and~~  
~~Courthouse Hollow~~ boating rules**

Due to the unique nature of Duck Creek, Woodard Hollow, and Courthouse Hollow on the Grand Lake O' the Cherokees, GRDA implements, from time to time, special boating rules for the area. Please contact the GRDA Police, located at the GRDA Ecosystems & Education Center in Langley, Oklahoma, or visit the website, www.GRDA.com for the current applicable Duck Creek, Woodard Hollow, and Courthouse Hollow Boating Rules.

**SUBCHAPTER 21. ADMINISTRATION OF RULES AND HEARINGS**

**300:35-21-3. Hearings for violation of rules**

(a) **Notice of Violation.** A Notice of Violation may be issued by the General Manager or his designee after the discovery of a violation of any rule. A Notice of Violation shall be signed by the GRDA employee issuing it and shall state:

- (1) The name of the person or entity responsible for the violation (the "respondent");
- (2) A description of the nature of the violation;

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(3) The remedial action and/or the relief required, which may include the imposition of a fee, penalty or fine as authorized by statute and/or the correction of any deficiency;

(4) A reasonable time to comply with the remedial action and/or the relief required;

(5) That the respondent may submit a response to the Notice of Violation, how and where a response may be submitted, and the deadline to submit a response; and

(6) That, in connection with the submission of a response to the Notice of Violation, the respondent may request a hearing before the General Manager or his designee to challenge the Notice of Violation.

(b) **Service of the Notice of Violation.** At the election of the GRDA, a Notice of Violation shall be served upon the respondent in the same manner as a civil summons is served or:

~~(1) By delivering a copy of the Notice of Violation to the respondent or by leaving a copy of the Notice of Violation at the respondent's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older, or in the event the dock is not permitted in the current owner's name or the permit owner is deceased and no probate is pending, service can be made by posting the Notice on the dock or walkway to the dock, or~~

~~(2) By mailing a copy of the Notice of Violation to the respondent at the last known address on file with GRDA by certified mail, return receipt requested, and delivery restricted to the addressee. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal.~~

~~(3) In the event respondent cannot be notified as stated in paragraphs 1 and 2 above, service of the Notice of Violation may be made by publication of a notice one (1) day a week for three (3) consecutive weeks in a newspaper of general circulation which is published in the county where the violation occurred or an adjoining county.~~

(c) **Permits.** In matters involving permits issued by the GRDA, the respondent shall be the person in whose name the permit is currently listed or the current owner of the dock if ascertainable. The Respondent shall be the only person entitled to notice under this subsection.

(d) **Response to Notice of Violation.** In the event that the respondent submits a response to the Notice of Violation, the response shall include a detailed statement of the reasons that respondent objects to the Notice of Violation and all arguments that the respondent desires to make at hearing, if requested. A respondent who fails to submit a response to the Notice of Violation in the time and manner stated in the Notice of Violation may be deemed by the GRDA General Manager or his designee to have waived the right to object or present a defense to the Notice of Violation.

(e) **Hearing.** A respondent who requests a hearing must also submit a response to the Notice of Violation and must provide an address and telephone number that the GRDA may use to communicate with the respondent concerning the hearing and final order. Upon timely receipt of a request for a hearing, the General Manager or his designee shall set the matter for hearing and shall notify the respondent in writing of

the hearing at least ten (10) calendar days before the hearing. Notice of the hearing shall be delivered to the respondent using the address specified in the response to the Notice of Violation and shall state the date, time and location of the hearing.

### **300:35-21-6. Final order**

(a) After the hearing officer has sent his recommendation to the GRDA Board of Directors as provided in 300:35-21-5 or after the time to remedy the violation has passed in the event the respondent does not request a hearing, the Board of Directors shall adopt, amend, or reject any findings or conclusions presented to the Board. If a hearing was previously held, the Board may remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for that purpose.

(b) Upon review of the record by the Board of Directors, the Board of Directors shall issue a final order reflecting the findings of fact, conclusions of law, and specifying the action to be taken.

(c) Service of the Final Order shall be made by mail to the last known address of respondent.

### **300:35-21-7. Administrative appeal**

A challenge from the Board of Director's Final Order shall be made within twenty (20) days from the date of respondent's receipt of the Final Order to the District Court. ~~Service of the Final Order shall be made in the same manner as provided for service of the Notice of Violation.~~

## **SUBCHAPTER 23. FOUR-WHEEL VEHICLES, OFF-ROAD VEHICLES AND ALL TERRAIN VEHICLES**

### **300:35-23-8. Alcoholic beverages prohibited**

~~Alcoholic beverages, including low point beer, are prohibited from Oklahoma state law regarding alcoholic beverages shall be applicable to all Waters and Land of GRDA, including areas in which off-road activities occur, but shall not have any effect on the codified rules found in Title 630 of the Oklahoma Administrative Code.~~

*[OAR Docket #19-514; filed 6-3-19]*

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## **TITLE 320. OKLAHOMA HISTORICAL SOCIETY CHAPTER 15. OKLAHOMA HERITAGE PRESERVATION GRANT PROGRAM**

*[OAR Docket #19-550]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions [NEW]

320:15-1-1. Purpose [NEW]

320:15-1-2. Applicability [NEW]

- 320:15-1-3. Definitions [NEW]
- 320:15-1-4. Declaratory ruling [NEW]
- 320:15-1-5. Public petition requesting changes in rules and regulations [NEW]
- Subchapter 2. Grant Applications [NEW]
- 320:15-2-1. Eligibility [NEW]
- 320:15-2-2. Grant selection weighted criteria [NEW]
- 320:15-2-3. Application process [NEW]

**AUTHORITY:**

Oklahoma Historical Society; 53 O.S. Section 411-417

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 24, 2019

**COMMENT PERIOD:**

February 15, 2019, through March 18, 2019

**PUBLIC HEARING:**

March 18, 2019

**ADOPTION:**

March 20, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 27, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 12, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed new chapter establishes rules for the Oklahoma Heritage Preservation Grant Program per requirements of 53 O.S. Section 413(a). The program will provide financial assistance to cities, counties, nonprofit organizations, and tribal governments to operate and improve the effectiveness of museums and historical organizations. The purpose of the Heritage Preservation Grant Program is to encourage the collecting, preserving, and sharing of Oklahoma history. The proposed rules will address the purpose of the program, eligibility, criteria, and application process.

**CONTACT PERSON:**

Nicole Harvey, Executive Assistant, Oklahoma Historical Society, 800 Nazih Zuhdi Drive, Oklahoma City, OK 73105, 405-522-5202, Nharvey@okhistory.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 12, 2019:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**320:15-1-1. Purpose**

The Oklahoma Historical Society, a state agency and private membership organization, may set aside funds each year to assist organizations that collect, preserve, and share collections associated with Oklahoma history. The objectives of the program include:

- (1) Create a statewide, online database that identifies collections, programs, and exhibits that will encourage the sharing of resources between institutions.
- (2) Encourage improvement in the care of collections, a higher quality of exhibits, and the expansion of Oklahoma history programs at the local level where a sense of

community and the spirit of volunteerism are assets that can be tapped for historical purposes.

(3) Foster a learning process that brings together trained, experienced museum and archival professionals with avocational volunteers and part-time employees who want to improve care of collections, learn techniques of preservation, and expand educational programs.

**320:15-1-2. Applicability**

The rules in this chapter shall be applicable to the Oklahoma Historical Society's Oklahoma Heritage Preservation Grant Program as authorized by 53 O.S. Sections 411-417.

**320:15-1-3. Definitions**

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

"Administrative Rules Liaison" means or refers to the OHS staff member that has been designated by the OHS Executive Director to serve as the liaison to the Office of Administrative Rules (OAR) in the Oklahoma Secretary of State's Office. They shall act as liaison between the OHS and the OAR in all matters concerning documents submitted by the OHS. All documents submitted by the OHS shall be coordinated through the liaison, and require the verification and signature of the liaison.

"Authorizing official" means or refers to the individual authorized on behalf of the institution to approve the submission of proposals and accept any resulting project grants or contracts.

"Collections" means or refers to the objects, photographs, manuscripts, videos, audio recordings, maps, periodicals, books, vertical files, archaeological material, or oral histories under the care of an institution.

"Conserved" means or refers to the act of stabilizing or protecting an artifact or archival collection.

"County government" means or refers to Oklahoma county governments as defined in Oklahoma law.

"Exhibits" means or refers to the public display either physical or online of collections with contextual interpretation informing the public on the topic being explored.

"Key staff" means or refers to the staff member(s) or individual(s) who will play a major role in the proposed project.

"Libraries with special collection(s)" means or refers to historical collections held by libraries that may include anything other than published books.

"Major component" means or refers to the mission of the institution and the inclusion of Oklahoma history.

"Municipal government" means or refers to Oklahoma municipalities as defined in Oklahoma law.

"OHS" means or refers to the Oklahoma Historical Society.

"OHS project teams" means or refers to employees or volunteers under the jurisdiction of the Oklahoma Historical Society who may serve as consultants or contractors to the grant recipient to accomplish all or part of an awarded project.

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**"Oklahoma Heritage Preservation Grant Review Committee"** means or refers to the committee appointed by the Oklahoma Historical Society Board President and confirmed by the Oklahoma Historical Society Board of Directors. As authorized by 53 O.S. Section 416(a) this committee will be made up of no less than five (5) and no more than seven (7) individuals.

**"Oklahoma Historical Society Board of Directors"** means or refers to the governing body of the Oklahoma Historical Society as authorized by 53 O.S. Section 1.6.

**"Operating budget"** means or refers to the most recent operating budget approved for the applicant organization. This budget shall include staff salaries but exclude non-recurring costs. Applicants of tribal or municipal entities may use the operating budget of the division in which the project will take place. Libraries with special collections may use the operating budget allotted to special collections. An example of this would be a city government applying for a grant to digitize historic maps. This applicant would use the operating budget for the division which oversees archives, not the entire budget of the city government.

**"Programs"** means or refers to organized educational activities available to the public. Examples of this might include a tour, lecture series, or workshop.

**"Project"** means or refers to an inclusive term to convey any eligible proposal.

**"Theme"** means or refers to broad categories of Oklahoma history such as "American Indian," "Transportation," or "Military."

**"Third-party consultant"** means or refers to a contracted third party who conducts work for the grant recipient as it relates to the project grant funds awarded.

**"Publications"** means or refers to publishing content of an educational nature in print or electronic form. For this purpose, publications would not include paid advertisements or invitation cards.

**"Strategic plan"** means or refers to an organization's process of defining its strategy, or direction, and making decisions on allocating its resources to pursue this strategy. The applicant organization's strategic plan should address the following: organization's mission statement, long-range planning, major issues and opportunities facing the organization, and an action plan for accomplishing goals.

**"Tribal government"** means or refers to federally recognized American Indian tribes located in Oklahoma.

## **320:15-1-4. Declaratory ruling**

(a) Any person subject to the rules contained in the rules of the Oklahoma Historical Society (Oklahoma Administrative Code Title 320.) may petition for a declaratory ruling as to the applicability of a specific rule and its effect on the petitioner. In petitioning the Oklahoma Historical Society for a declaratory ruling, the following procedures must be followed:

(1) The petition shall be in writing and submitted to the Executive Director of the Oklahoma Historical Society via US mail;

(2) The petition shall state with specificity the rule in question;

(3) The petition shall state clearly and with specificity the basis for the action and the action or relief sought;

(4) The petition shall pose the specific question(s) to be answered by the Oklahoma Historical Society; and

(5) The petitioner or the petitioner's authorized representative shall print his or her name, address, and telephone number on the petition and sign it.

(b) The petition will be stamped upon receipt by the Oklahoma Historical Society to show the date it was received. The petition shall be referred to the Executive Director of the Oklahoma Historical Society, who shall issue a ruling.

(c) The petitioner shall be notified of the declaratory ruling in writing by US certified mail, return receipt requested.

(d) The ruling shall become final unless, within twenty (20) days, the petitioner files with the OHS Administrative Rules Liaison a petition for appeal before the Board, which shall specify in detail the alleged error(s) in the Executive Director's decision, together with arguments in support of the petitioner's claim of the alleged error(s). The Executive Director may file a written response to the petition, if desired, and the Board will render its opinion based upon consideration of the written petition and the written response of the Executive Director, if one is filed. The petition will be set on an agenda of a regularly scheduled meeting and the Board will rule on the matter. If the petitioner requests such a hearing, the matter shall be placed on the agenda of the next scheduled Board meeting if it is filed twenty (20) calendar days or more prior to the meeting. If the request is filed less than twenty (20) days prior to the next scheduled Board meeting, it will be placed on the agenda of the following meeting.

(e) At the hearing of the matter by the Board, the petitioner and relevant OHS staff shall be permitted to present oral arguments to the Board, the length of which shall be limited by the President of the Board. At the conclusion of the presentation of the matter, the Board will either render a decision or continue the matter at a future meeting.

(f) A declaratory ruling or refusal to issue such a ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. Section 307).

## **320:15-1-5. Public petition requesting changes in rules and regulations**

(a) Any individual wishing to petition the Oklahoma Historical Society concerning changes in any rules to this chapter may do so by writing the Executive Director at the Oklahoma Historical Society's office.

(b) The Oklahoma Historical Society Board of Directors will act upon the request at a regularly scheduled meeting and the Board will rule on the matter. Upon receiving the request the matter shall be placed on the agenda of the next scheduled Board meeting if it is filed twenty (20) calendar days or more prior to the meeting. If the request is filed less than twenty (20) days prior to the next scheduled Board meeting, it will be placed on the agenda of the following meeting. Upon finding sufficient cause, the Board may order public hearings on the rule(s) in question. If the Board takes action on the petition, public hearings will take place within thirty (30) days after

any required publications. The Board will consider fully all written and oral submissions respecting the proposed new rule(s), or amendment or repeal of existing rule(s). The entire process of requesting changes to a rule(s) will be subject to 75 O.S. Section 250 et seq.

**SUBCHAPTER 2. GRANT APPLICATIONS**

**320:15-2-1. Eligibility**

(a) **Eligible Entities.** Only entities that meet the following eligibility requirements shall be considered for a grant:

- (1) Applicants must be municipal, county, or tribal governments or not-for-profit historical organizations registered with the Oklahoma Secretary of State (museums, historic sites, historical associations, libraries with special collections, or genealogical associations in the state of Oklahoma that feature Oklahoma history as a major component of their mission).
- (2) Applicant organizations must collect, preserve, and share collections that may include objects, photographs, manuscripts, videos, audio recordings, maps, periodicals, books, vertical files, archaeological material, or buildings.
- (3) Applicant organizations must have a strategic plan. If an organization does not have a strategic plan, the only project that will be eligible for consideration is the development of a strategic plan.

(b) **Eligible Projects.** Only projects that meet the following eligibility requirements shall be considered for a grant.

- (1) The minimum amount requested shall be \$1,000 and the maximum amount requested shall be \$20,000.
- (2) Applicants must provide a cash match of ten (10) percent of the total grant funds awarded by the OHS.
- (3) Proposed projects must be completed within twelve (12) months of receipt of grant contract.

(c) **Ineligible Projects.** The following projects will not be eligible for a grant:

- (1) Repair, maintenance, or expansion of facilities
- (2) Rent or mortgage payments
- (3) Utilities or insurance
- (4) Salaries, wages, or benefits for full-time employees (project-specific salaries will be considered)
- (5) Creation of new monuments, sculptures, murals, or other works of art, unless it serves as an integral part of a larger exhibit
- (6) Acquisition of real estate
- (7) Landscaping or site work
- (8) Planning for new construction

**320:15-2-2. Grant selection weighted criteria**

All project proposals will be evaluated and ranked using the following weighted criteria:

- (1) Historical importance of the collections or theme of the applicant organization as defined by the most current OHS Historic Context Review Report (available upon request), which is in effect at the time of the solicitation of proposals, which shall be weighted at a factor of four (4).

(2) Project possibilities, which may include number of patrons served, economic impact, capacity building impact, or anticipated revenue generated which shall be weighted at a factor of four (4).

(3) Community support, which may include direct participation of officers, board members, members, or volunteers; affiliations with other non-profit organizations; or amount and source of the match, which shall be weighted at a factor of three (3).

(4) Sustainability, which may include record of collecting experience, record of regular meetings of officers and board members, record of past completed projects, and record of budget and project management capabilities, which shall be weighted at a factor of three (3).

(5) Demonstration of measurable project impact based on quantifiable results such as number of collections conserved, oral histories produced, or students served, which shall be weighted at a factor of three (3).

(6) Annual operating budget, including salaries, of under \$300,000, which shall be weighted at a factor of two (2).

(7) Failure to meet requirements from past Heritage Preservation Grant award (if applicable), which shall be weighted at a factor of negative two (-2).

**320:15-2-3. Application process**

(a) **Requests for project proposals.** Requests for project proposals shall be distributed at such times as determined by the OHS in the manner provided below.

(b) **Notification, solicitation, and deadlines.** Notification of availability of funds, solicitation of proposals, and deadlines for the receipt of application shall be provided, but not limited to, the following organizations or via the following methods:

- (1) Oklahoma Museums Association
- (2) Oklahoma Department of Libraries
- (3) Oklahoma Historical Society website
- (4) Press Release

(c) **Funding.** The total amount of funds to be granted, as well as specific grants awarded, will be based on appropriations, unless a revenue shortfall reduces appropriations to the OHS. If this occurs, funds granted will be deducted by the proportionate percentage of the shortfall to the Oklahoma Historical Society's appropriations.

(d) **Typical projects.** The following serve as examples of projects that would be eligible for funding. Some of these projects may be accomplished by a grant recipient's staff and/or volunteers, with payments available every quarter or month based on completed work. Some may be accomplished through OHS project teams that work as consultants to the grant recipients. Still other projects may be completed through third-party consultants who are paid quarterly based on work completed.

- (1) Storage, management, and/or care of collections
- (2) Conducting, transcribing, or cataloging oral histories
- (3) Digital conversion of historical collections
- (4) Preservation assessments
- (5) Emergency Preparedness Efforts

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- (6) Environmental assessments and monitoring systems
  - (7) Exhibit research, writing, graphic design, fabricating, mounting, and installation
  - (8) Production or installation of audio/visual components of exhibits
  - (9) Governance capacity building, including board development, constitution and bylaws, or policies and procedures
  - (10) Strategic plan/succession planning
  - (11) Board, staff, and volunteer training
  - (12) Public programs, such as guided tours, classes, or lectures
  - (13) Publications
  - (14) Historical markers
  - (15) Website development
  - (16) Regional workshops
  - (17) Acquisition of collections
- (e) **Application requirements.** Applications forms will be available online at the Oklahoma Historical Society's website following the announcement of solicitation of proposals. This form must be submitted online following the instructions on the website. Applicants with questions regarding the application may contact the OHS. Any staff member(s) responding directly to questions will not be part of the evaluation or award decision process.
- (1) The following information will be requested in the application:
    - (A) Project name
    - (B) Organization with name and contact information of authorizing official
    - (C) Organization status (non-profit, governmental entity, tribal)
    - (D) Date registered with the Oklahoma Secretary of State, if applicant organization is a nonprofit
    - (E) Organization type (museum, historic site, historical society, library, etc.)
    - (F) Organization description (including, if applicable, existing programs, scope and approximate number of collections, visitation, sources of financial support, board members, and total membership)
    - (G) Accessibility to the public (this may include hours of operation, website, social media, workshops, or regularly scheduled meetings)
    - (H) Key staff/volunteers (if applicable) and board members
    - (I) Project summary
    - (J) Plan for sustainability
    - (K) Project cost
    - (L) Amount requested
    - (M) Source of ten (10) percent cash match
    - (N) Strategic plan (not applicable if grant request is for strategic plan development)
    - (O) Organizational and proposed project budget
    - (P) Timeline of project
    - (Q) Date board of directors approved submitting a project proposal
    - (R) Any other information as may be requested

- (2) OHS staff will evaluate all project proposals and certify whether each meets the minimum eligibility requirements. Incomplete or improperly completed applications, or applications received after the application deadline will not be considered.
  - (3) Only one completed application will be considered per organization each grant selection cycle.
- (f) **Application evaluation and awards.**
- (1) A committee of OHS staff members, appointed by the OHS Executive Director, shall rank the proposed projects using the weighted criteria. The OHS staff member(s) designated to facilitate the program and grant application process will be excluded from appointment to this committee.
  - (2) Using the established weighted criteria (320:15-2-2[1-7]), a rating of one (1) to ten (10) will be applied to each criteria, with one (1) signifying minimum value and ten (10) signifying maximum value. The rating then will be multiplied by the weight assigned to each criteria to determine a total value. The highest rating an organization may receive is 190 points.
  - (3) The OHS Executive Director shall submit the ranked list of project proposals to the Oklahoma Heritage Preservation Grant Review Committee for review and recommendation to the full Board.
  - (4) The OHS Board of Directors will make the final decision of which projects will be funded, the amount of each grant, the number of organizations to receive a grant, and the quarter of the year when each project will be initiated. In awarding grants the Board will, in accordance with statutory requirements, consider geographic diversity and give preference to projects affecting collections, educational programs, and exhibits (53 O.S. Section 415). Because the grant application procedure(s) are not individual proceedings, the awarding of grants by the Board is not subject to appeal under the Administrative Procedures Act.
  - (5) The OHS will initiate a contract with each grant recipient.
- (g) **Payment procedures.** Where applicable, payments for projects, programs, services, or activities for the Heritage Preservation Grant Program will be made according to the Central Purchasing Act (74 O.S. Section 85.1 et seq.) and Central Purchasing Rules as established by the Oklahoma Office of Management and Enterprise Services Administrative rules OAC 260:115. Grant recipients must submit documentation for completed work and invoices to receive reimbursement as the project moves forward. All reimbursements will be made after proof that work has been completed.
- (h) **Audit.**
- (1) The grantee shall retain all books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the successful grant recipient agrees any pertinent State or Federal agency will have the right to examine and audit all

records relevant to execution and performance of the resultant contract.

(2) The successful grant recipient is required to retain records relative to the contract for the duration of the contract and for a period of seven (7) years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

*[OAR Docket #19-550; filed 6-5-19]*

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 1. AGENCY AUTHORITY AND OBJECTIVES**

*[OAR Docket #19-538]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 390:1-1-1 [AMENDED]
- 390:1-1-2 [AMENDED]
- 390:1-1-2.1 [AMENDED]
- 390:1-1-6 [AMENDED]
- 390:1-1-12 [AMENDED]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.16; 20 O.S., § 1313.2.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to 390:1-1-1 Purpose, to remove the word ~~chapter~~ and replace with the word Title.

Amendments to 390:1-1-2 Compliance with laws and rules, replacing the word ~~chapter~~ with Title in (a) and (b).

Amendments to 390:1-1-2.1 Definitions, new definition of Accreditation or Accredited as it relates to Colleges or Universities means accredited through one of the following accrediting entities: Council for Higher Education and Accreditation (CHEA); Accrediting Commission for Community and Junior Colleges (ACCJC) Western Association of Schools and Colleges; Higher Learning Commission (HLC); Middle States Commission on Higher

Education (MSCHE); New England Commission of Higher Education (NECHE); Southern Association of Colleges and Schools Commission on Colleges (SACSCOC); and WACS Senior College and University Commission (WSCUC).

Amendments to 390:1-1-6 Public records, (e) (2) adding verbiage to an Agency requests for records will be accepted if on agency letterhead and received by U.S. Mail with original signature. If the Agency requesting the records has an email address ending in .org, .gov, .state, or .us then an email request is sufficient.

Amendments to 390:1-1-12. Event and course fees, adding verbiage to allow CLEET to establish a per student/per agency rate based on instructor fees, training materials, travel, facility rental and other incidental costs incurred.

**CONTACT PERSON:**

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**390:1-1-1. Purpose**

Pursuant to the authority vested in the Council by 70 O.S., Section 3311, 20 O.S., Section 1313.2, and 59 O.S., Section 1750.1 et seq., Section 1451 et seq., 1350.1 et seq., 21 O.S. Section 1289.8 and 1290.1 et seq., the rules of this ~~chapter~~Title have been promulgated. The purpose of these rules is to set forth the requirements and procedures needed to effectively implement and enforce the provisions of these statutes. These rules supplement existing state and federal laws, and being duly promulgated, shall have the force and effect of law.

**390:1-1-2. Compliance with laws and rules**

(a) Any statute of the United States, or of the State of Oklahoma now existing, or duly enacted in the future, shall supersede any conflicting provision of the rules of this ~~Chapter~~Title to the extent of such conflict, but shall not affect the remaining provisions herein.

(b) All persons and organizations affected by the rules of this ~~Chapter~~Title and related laws shall be knowledgeable of and conduct pertinent operations in accordance with all such rules and laws.

(c) The Council on Law Enforcement Education and Training is a state agency and is therefore subject to Oklahoma laws regulating the procedures which must be followed by state agencies.

**390:1-1-2.1. Definitions**

In addition to terms defined in 70 O.S., Section 3311 et seq., the following words or terms, when used in this ~~Chapter~~Title, shall have the following meaning unless the context clearly indicates otherwise:

**"Acceptable electronic signature technology"** means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data

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in such a manner that if the data is changed, the electronic signature is invalidated.

**"Accreditation or Accredited"** means as it relates to Colleges or Universities accredited through one of the following accrediting entities:

(A) Council for Higher Education and Accreditation (CHEA);

(B) Accrediting Commission for Community and Junior Colleges (ACCJC) Western Association of Schools and Colleges;

(C) Higher Learning Commission (HLC);

(D) Middle States Commission on Higher Education (MSCHE);

(E) New England Commission of Higher Education (NECHE);

(F) Southern Association of Colleges and Schools Commission on Colleges (SACSCOC); and

(G) WACS Senior College and University Commission (WSCUC).

**"Authorized signature"** means a manual, electronic or digital identifier uniquely linked to an individual, or if representing an agency, the agency head or person authorized by the head of the agency to sign documents submitted to CLEET.

**"CLEET"** means the Council on Law Enforcement Education and Training, and its administrative officers and personnel.

**"Council"** means the appointed members of the Council on Law Enforcement Education and Training, as defined in Title 70 O.S., Section 3311.

**"Director"** means the Director of the Council on Law Enforcement Education and Training, or designated agent.

**"Electronic photograph"** means a photograph created, generated, sent, communicated, received or stored by electronic means.

**"Electronic record"** means a record created, generated, sent, communicated, received, or stored by electronic means.

**"Electronic signature"** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

**"Nationally recognized credit card"** means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by the issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in the state.

### 390:1-1-6. Public records

(a) Except as specifically exempted as a confidential record, official records of the Council on Law Enforcement Education and Training are subject to the Oklahoma Open Records Act, Title 51, Section 24A1 *et seq.*

(b) Copies of public information may be obtained from the Council office during regular business hours upon receipt of a written request and payment of a fee to cover the cost of providing copies of the requested.

(c) There may be a charge of Twenty-Five Cents (\$.25) per page for copies of records of the Council.

(d) In the event a request for copies is for a commercial purpose or would cause disruption of the performance of the regular duties of the Council or Council staff, there may be an additional charge computed and assessed for locating and copying the requested materials based upon the cost of the lowest paid employee necessary to accomplish the copying request.

(e) Pursuant to 51 O.S., Section 24A.8:

(1) Individual requests for records will only be accepted if received by U.S. Mail or facsimile.

(2) Agency requests for records will be accepted if on agency letterhead and received by U.S. Mail with original signature. If the Agency requesting the records has an email address ending in .org, .gov, .state, or .us then an email request is sufficient.

(3) If documents requested are not submitted by the individual or a law enforcement agency for investigative purposes, an *Order to Compel and Protective Order for Materials Produced by CLEET* must be received. This Order must be certified by the issuing Court.

(4) A subpoena without an *Order to Compel and Protective Order for Materials Produced by CLEET* is not sufficient.

(f) All social security numbers except for the last four digits will be redacted from any documents supplied by CLEET.

(g) All residential addresses will be redacted from any documents supplied by CLEET.

### 390:1-1-12. Event and course fees

(a) Events and courses identified by the Director, or the director's designee, shall be subject to fees authorized in 70 O.S. 3311 (B) (13). Costs will be advertised at the time the event or course is announced.

(1) ~~Hourly tier rate per student cost for courses or events:—Courses may be offered at a per student rate. CLEET shall establish this rate based on the anticipated course costs. These cost may include items such as instructor fees (if any), training materials, travel costs (motel, per diem and transportation), facility rental (if any) and any other incidental costs incurred.~~

(A) ~~Supplies~~

(i) ~~Level 1: \$ 0.00~~

(ii) ~~Level 2: \$ 3.13~~

(B) ~~Facility rental other than K.O. Rayburn Training Center~~

(i) ~~Level 1: \$ 0.00~~

(ii) ~~Level 2: \$ 0.38~~

(iii) ~~Level 3: \$ 0.63~~

(iv) ~~Level 4: \$ 0.75~~

(v) ~~Level 5: \$ 0.88~~

(vi) ~~Level 6: Facility rental fees for the K.O. Rayburn Training Center outlined in (OAC) 390:55-1-11 divided by the number of hours for the class or event.~~

(C) ~~Professional service fees~~

(i) ~~Level 1: \$ 0.00~~

- (ii) Level 2: \$ 1.75
- (iii) Level 3: \$ 3.50
- (iv) Level 4: \$ 12.50
- (v) Level 5: \$ 25.00
- (vi) Level 6: \$ 50.00

(2) ~~Event or course fees based upon a per person rate.~~ Courses may be offered at an agency rate. CLEET shall establish this rate based on the anticipated course costs associated with CLEET providing an instructor or instructors for a course hosted by an agency. These costs may include items such as training materials, travel costs (motel, per diem and transportation), facility rental fees (if any) and any other incidental costs incurred.

- (A) Level 1: \$ 100.00
- (B) Level 2: \$ 150.00
- (C) Level 3: \$ 240.00
- (D) Level 4: \$ 350.00
- (E) Level 5: \$ 375.00
- (F) Level 6: \$ 475.00

- (b) Payment of fees shall be submitted with an application form at least five working days prior to the event.
- (c) Forms of payment accepted by CLEET are found in Rule 390:1-1-13.
- (d) Cancellations for an event or course must be made ~~24 hours~~ two working days in advance of the scheduled training date. Applications not cancelled shall be charged the full fee amount.
- (e) The full fee amount for an event or course will be refunded in the event of a cancellation by CLEET due to unforeseen circumstances or at the request of the Director or the director's designee.
- (f) Failure to pay any assessed fee shall result in an action against a certification or license pursuant to OAR Chapter 2. Administrative Procedures.

[OAR Docket #19-538; filed 6-4-19]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 2. ADMINISTRATIVE PROCEDURES**

[OAR Docket #19-539]

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**RULES:**  
390:2-1-2 [AMENDED]  
390:2-1-12 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.16; 20 O.S., § 1313.2.

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**GIST/ANALYSIS:**  
Amendments to 390:2-1-2 Denials, reprimands, suspensions, revocations, disciplinary penalties, fines, (c) Disciplinary procedures to remove Administrative Procedures Act Section ~~304~~ and replace with Section 250. (c) (2) to remove ~~(C)~~.

Amendments to 390:2-1-12 Procedures to petition for promulgation, to remove 75 O.S. Section ~~306~~ and replace with Section 305.

**CONTACT PERSON:**  
Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

- 390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines**
- (a) **Persons affected by individual actions.** Under the authority of 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.1 et seq.; 59 O.S., Sections 1451-1476; 20 O.S., Section 1313.2, 21 O.S., Section 1289.9 and 21 O.S. Section 1290.1 et seq., and 59 O.S. 1350.1 et seq., CLEET may take Administrative Actions against the following parties for violations of said statutes and the Rules and Regulations of CLEET:
    - (1) Certified peace officers and applicants;
    - (2) Basic Peace Officer Academy students and applicants;
    - (3) Private security training schools and applicants;
    - (4) Armed and unarmed security guards, private investigators, security agencies, investigative agencies and applicants;
    - (5) Certified drug detector dogs, handlers and applicants;
    - (6) CLEET certified instructors for Law Enforcement;
    - (7) Counties, cities and towns involved in the penalty assessment program;
    - (8) Private security training instructors and applicants;
    - (9) Approved SDA Firearms Instructors;
    - (10) Retired municipal, county, state and federal peace officers;
    - (11) Certified Reserve Peace Officers and applicants;
    - (12) Bail Enforcement training schools and applicants;
    - (13) Bail Enforcement training instructors and applicants;
    - (14) Bail Enforcement persons and applicants; and

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- (15) Any other parties for which CLEET has statutory authority.
- (b) **Type of sanctions.** CLEET may take the following actions against the parties mentioned in (a) of this section:
- (1) Oral Reprimand
  - (2) Written Reprimand
  - (3) Denial
  - (4) Suspensions
  - (5) Revocation and/or
  - (6) Disciplinary penalty or fine.
- (c) **Disciplinary procedures.** In the event CLEET, or its designated agent, has determined that an action will be taken, the following procedures shall apply in accordance with the Administrative Procedures Act, Section ~~304~~250, et. seq. Title 75 of the Oklahoma Statutes.
- (1) The issuance or denial of a new license or new certification is not an individual proceeding, and is not subject to review by the administrative hearing process set forth below.
  - (2) CLEET or its designated agent shall serve by certified mail, return receipt requested, or by personal delivery by an individual authorized by CLEET, a "Notice of Council Action" containing information required by 75 O.S. Section 309 et. seq., to the party at his last known residential address as reflected by the records of CLEET or current employing department or agency address if the personal address is unknown. If said letter is returned and notation of U.S. Postal Service indicates "unclaimed," "moved," "refused" or any non-delivery markings and the Council's records indicate no change of address as required by rule 390:35-5-13, and 70 O.S., §3311 (E) the notice and any subsequent order shall be deemed served. Any order issued shall be deemed valid as if said individual or agency had been served.
  - (3) The notice shall provide that CLEET action shall commence and become effective fifteen (15) days after receipt of said notice by the party, unless the party timely files a written request for a hearing with CLEET except as follows:
    - (A) When CLEET determines that an allegation warrants immediate action, the commencement and effective date of fifteen (15) days will be waived and the action will be effective upon receipt of said notice.
    - (B) A request for hearing will be timely filed if said request is in writing and received by CLEET, its Director, or designated agent within ten (10) days of the date the party received notice.
    - (C) If a timely written request for a hearing is not received by CLEET, the allegations shall be deemed confessed by the party and the action will become final.
    - (D) If the written request for hearings is timely received by CLEET, such hearings shall be scheduled within sixty (60) days from the date said request is received to be heard at the date to be determined.

- (4) The timely filing of a written request for a hearing will stay CLEET's action pending disposition of the hearing, unless the notice and allegations fall within (3)(A) of this subsection.
- (5) The hearings will be held at a location designated by the Council.
- (6) The hearing officer will be designated by CLEET or the Director thereof, and each party shall be afforded an opportunity to be heard and present evidence.
- (7) The hearing will be electronically recorded and the tapes of said hearing will be preserved until all avenues of appeal have expired or been exhausted. If a party desires a court reporter, or certified stenographer, it shall be the party's burden to provide and bear the cost of said services and subsequent transcription.
- (8) If a party fails to appear at the scheduled hearings without prior notification or good cause, the hearing officer shall default the party, and enter an order sustaining the allegations set forth in the notice and imposing the sanctions set forth therein; or if the State sustains its burden, the hearing examiner shall rule accordingly.
- (9) If the complaining party fails to show or the state otherwise fails to prove the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.
- (10) The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.
- (11) Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.
- (12) A party may appeal the hearing officer's decision as set forth in 75 O.S. Section ~~304~~250 et. seq. of the Administrative Procedures Act.

### **390:2-1-12. Procedures to petition for promulgation, amendment or repeal of rule**

Any person affected by a rule and regulation promulgated and adopted by CLEET, or the lack of a rule and regulation may petition CLEET to promulgate, adopt, amend or repeal the rule pursuant to 75 O.S. Section ~~306~~305 and in accordance to this section.

- (1) A written request must be received by CLEET setting forth:
  - (A) The proposed amendment, promulgation, or repeal of a specific rule or regulation.
  - (B) The reason for the petition to repeal, promulgate, or amend a rule or regulation.
  - (C) The effect that the repeal, amendment or promulgation of a rule or regulation would have on the petitioner.
- (2) The petition must be in writing, signed by the petitioner and submitted to CLEET or its Director.
- (3) To be considered at the next CLEET meeting the petition must be submitted and received at least fifteen (15) days prior to the scheduled meeting. If said petition is

received less than fifteen (15) days prior to the next scheduled meeting, the petition will not be considered until the Council reconvenes.

(4) The petitioner will be notified by regular mail as to the date, time, and place that the petition will be considered.

(5) If the petitioner fails to show at said meeting, the petition will not be considered.

(6) If the petitioner appears, CLEET will entertain any additional information or evidence in support of said petition. However, CLEET may limit the presentation time as it deems necessary. If a time limitation is to be imposed, CLEET will so state in the notice to petitioner.

(7) CLEET, after consideration of said petition, will inform the petitioner of its findings and action on the petition within thirty (30) days from the date the petition is considered. If the subject matter contained in the petition is complex in nature, CLEET may extend the thirty (30) day limit and will inform the petitioner of a date certain that a decision will be rendered.

[OAR Docket #19-539; filed 6-4-19]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 10. PEACE OFFICER CERTIFICATION**

[OAR Docket #19-540]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

390:10-1-4 [AMENDED]

**AUTHORITY:**

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**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Amendments to 390:10-1-4 Peace officer employment standards, All peace officers, reserve officers, and tribal officers shall notify, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document

which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.

**CONTACT PERSON:**

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**390:10-1-4. Peace officer employment standards**

(a) A person shall comply with the requirements of 70 O.S. Section 3311(E)(F)(G) in order to be employed as a peace officer.

(b) Nothing herein shall preclude any law enforcement agency from establishing and implementing minimum employment standards in addition to those set forth by law and the rules of this chapter.

(c) All peace officers, reserve ~~peace~~ officers and tribal officers are required to maintain with ~~the Council—CLEET, the~~ their current mailing addresses address, and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number must be made within ten (10) days of the effective change, in writing, with an original signature. Notices will not be accepted over the phone, by fax, or by email.

(d) ~~Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.~~ All peace officers, reserve officers, and tribal officers shall notify, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.

[OAR Docket #19-540; filed 6-4-19]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 15. BASIC PEACE OFFICER CERTIFICATION TRAINING**

[OAR Docket #19-541]

**RULEMAKING ACTION:**

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# Permanent Final Adoptions

## RULES:

- Subchapter 1. Basic Academy Programs  
390:15-1-6 [AMENDED]
- Subchapter 3. Collegiate Officer Program  
390:15-3-9 [AMENDED]
- Subchapter 4. Basic Peace Officer Certification Academy Program [NEW]  
390:15-4-1 [NEW]  
390:15-4-2 [NEW]  
390:15-4-3 [NEW]  
390:15-4-4 [NEW]  
390:15-4-5 [NEW]  
390:15-4-6 [NEW]  
390:15-4-7 [NEW]  
390:15-4-8 [NEW]  
390:15-4-9 [NEW]  
390:15-4-10 [NEW]  
390:15-4-11 [NEW]
- Subchapter 5. Reserve Officer Bridge Academy  
390:15-5-2 [AMENDED]  
390:15-5-7 [AMENDED]

## AUTHORITY:

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## GIST/ANALYSIS:

Subchapter 1. Basic Academy Programs  
Amendments to 390:15-1-6 Basic Academy participation, adding verbiage to (d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11- whereby the trainee promises to repay the note by remaining in the law enforcement profession in the state of Oklahoma as a full-time peace officer for four (4) years following graduation from the basic law enforcement academy.

Subchapter 3. Collegiate Officer Program  
Amendments to 390:15-3-9 Instructor requirements, (b) Instructors of record ~~are required to participate as an instructor in the appropriate skills training block of a CLEET Basic Academy or CLEET approved academy city/agency basic academy, at least one time in the year preceding their scheduled participation as a COP skills instructor. (lead instructors) shall attend and complete a CLEET three (3) day skills refresher/update course for instructing in a basic academy setting (the academy first day classroom, and the two days thereafter) once every three years. This requirement may be accomplished during any CLEET approved basic law enforcement academy offered in the state. (e) To remain active as a COP skills instructor, COP skills instructors must instruct annually within a CLEET or approved academy city/agency basic academy.~~

Subchapter 4. Basic Peace Officer Certification Academy Program The Basic Peace Officer Certification Academy Program (BPOC) provides an alternative route to full time and reserve peace officer certification for individuals interested in a career in law enforcement who are not commissioned or appointed as peace officers, via any state supported technology center school or higher education institutions as approved by CLEET. It supplements the three other routes available, i.e., through the completion of a Council on Law Enforcement Education and Training Basic

Peace Officer Certification Academy, through the completion of a CLEET approved academy city/agency basic academy, or through the completion of a CLEET approved Collegiate Officer Program.

Amendments to 390:15-5-2 Eligibility, (a) Beginning January 1, 2014, any reserve officer who has completed a CLEET two-hundred-forty-hour reserve peace officer certification program, and who has been in active service in a reserve capacity ~~in the past two (2) years, for the past six (6) months~~ shall be eligible to attend a Bridge Academy pursuant to 70 O.S., Section 3311 ~~(E)(2)(G)~~ to become certified as a full-time police or peace officer.

Amendments to 390:15-5-7 Bridge Academy participation, adding verbiage to (d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11- whereby the trainee promises to repay the note by remaining in the law enforcement profession in the state of Oklahoma as a full-time peace officer for four (4) years following graduation from the basic law enforcement academy.

## CONTACT PERSON:

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

### 390:15-1-6. Basic Academy participation

- (a) All trainees shall be capable of full participation and fully participate in all Basic Academy activities.
- (b) All trainees shall be required to score a minimum of seventy percent (70%) on a reading, writing and comprehension examination pursuant to 70 O.S. 3311.11.
- (c) All trainees shall be required to score a minimum of seventy percent (70%) on a physical assessment test pursuant to 70 O.S. 3311.11.
- (d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11 whereby the trainee promises to repay the note by remaining in the law enforcement profession in the state of Oklahoma as a full-time peace officer for four (4) years following graduation from the basic law enforcement academy.
- (e) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

## SUBCHAPTER 3. COLLEGIATE OFFICER PROGRAM

### 390:15-3-9. Instructor requirements

- (a) Skills area instructors of record, or lead instructors, are required to meet the instructor specifications set forth in 390:25-1-9 through 390:25-1-12.
- (b) Instructors of record ~~are required to participate as an instructor in the appropriate skills training block of a CLEET Basic Academy or CLEET approved academy city/agency basic academy, at least one time in the year preceding their scheduled participation as a COP skills instructor. (lead instructors) shall~~

attend and complete a CLEET three (3) day skills refresher/update course for instructing in a basic academy setting (the academy first day classroom, and the two days thereafter) once every three years. This requirement may be accomplished during any CLEET approved basic law enforcement academy offered in the state.

~~(e) To remain active as a COP skills instructor, COP skills instructors must instruct annually within a CLEET or approved academy city/agency basic academy.~~

~~(e) Skills instructors who are not lead instructors or instructors of record, shall meet the CLEET specialized instructor requirements set forth in 390:25-1-9 through 390:25-1-12. They must also assist in a CLEET basic academy or an approved city/agency basic academy every three years.~~

~~(e) Instructors, other than skills instructors, shall meet the requirements of the institution sponsoring the COP.~~

~~(e) Instructors for portions of the COP legal block identified by CLEET must be taught by an attorney currently licensed by the Oklahoma Bar Association.~~

**SUBCHAPTER 4. BASIC PEACE OFFICER CERTIFICATION ACADEMY PROGRAM**

**390:15-4-1. Purpose**

The Basic Peace Officer Certification Academy Program (BPOC) provides an alternative route to full time and reserve peace officer certification for individuals interested in a career in law enforcement who are not commissioned or appointed as peace officers, via any state supported technology center school or higher education institutions as approved by CLEET. It supplements the three other routes available, i.e., through the completion of a Council on Law Enforcement Education and Training Basic Peace Officer Certification Academy, through the completion of a CLEET approved academy city/agency basic academy, or through the completion of a CLEET approved Collegiate Officer Program.

**390:15-4-2. Program administration**

(a) The Council on Law Enforcement Education and Training shall provide a route to peace officer certification by providing state-supported technology center schools or higher education institutions authority to conduct courses of study which are designed to include and cover all CLEET mandated Basic law Enforcement Academy course objectives for actual classroom training. Outside the classroom training shall be provided at the CLEET training facility, unless authorized by CLEET to conduct outside the classroom training to include skills training.

(b) CLEET shall establish minimum BPOC standards for instructors, curriculum, program evaluation, student enrollment, achievement and certification.

(c) CLEET shall provide two (2) outside the classroom training sessions for BPOC at the CLEET training facility (one in the spring and one in the fall). Each training session shall be, at a minimum, 22 days in duration and shall include: Law

Enforcement Driver Training, Defensive Tactics, Firearms, Practical Exercises and the administration of the final qualification examination. All costs for the training sessions at the CLEET training facility shall be paid to CLEET in advance, unless other arrangements are made with the CLEET Financial Manager. Student limits for each session are 30 students per session unless otherwise approved by the Executive Director.

(d) BPOC entities who in making their application to host a basic law enforcement academy request approval to conduct the outside of classroom training shall meet the training instructor and facilities requirements found in the CLEET policies for conducting off-site Firearms Instructor, LEDT Instructor, and Defensive Tactics Instructor training. Facilities will be inspected by a CLEET employee to confirm compliance.

**390:15-4-3. CLEET oversight and program administration**

(a) CLEET shall require state-supported technology center schools and higher education institutions to complete an application for review and vote by the Council. The Council may approve up to two (2) new entities each year to offer the BPOC. Applications rejected by the Council will receive a notice providing a clear and concise statement pertaining to the reason behind the denial.

(b) BPOC entities shall be required to appoint a BPOC Director.

(c) CLEET shall set the schedule for each outside the classroom session to be held at the CLEET training facility by the 1<sup>st</sup> of October in the preceding year.

(d) Approved entities shall arrange their BPOC training schedule so that the training to be completed at the CLEET training facility occur at the end of the program.

(e) CLEET shall provide approved BPOC entities the per session costs for all BPOC training to be completed at the CLEET training facility.

(f) BPOCs are required to meet minimum curriculum requirements as set forth in OAR 390:15-1-2.

(g) All academic BPOC testing shall be subject to the sponsoring institution's testing and grading system, except in no case shall a passing grade be lower than 75 percent. First Aid skills area testing shall meet the minimum grading requirements set forth by CLEET or the certifying First Aid institution.

(h) CLEET shall support the student attendance/participation policy of any BPOC institution with the exception that all skills training shall be 100 percent participation. All training completed at the CLEET training facility shall be 100 percent participation.

**390:15-4-4. Director's qualifications**

(a) BPOC Directors should possess abilities which would enable them to assume administrative responsibility for planning, scheduling, presenting, coordinating, reporting and generally managing a BPOC.

(b) CLEET may deny, suspend or revoke certification of a BPOC Director for cause.

## Permanent Final Adoptions

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### **390:15-4-5. Director's functions**

(a) BPOC Directors are responsible for completing the following:

- (1) The entity's application and seeking Council approval for the program;
- (2) program resource allocation;
- (3) ensuring adequate facilities are available throughout the program;
- (4) program records maintenance;
- (5) selection of instructors; and
- (6) instructor evaluations.

(b) BPOC Directors are responsible for their entity's efforts toward basic law enforcement training, including maintaining the academy schedule (subject and instructors), student attendance records and disciplinary actions, curriculum and test/exam security and all other records pertaining to each student enrolled who may graduate or may be removed from training.

(c) BPOC Directors are responsible for ensuring that all course participants complete the required background investigation pursuant to 70 O.S., subsection 3311.16 (B).

(d) All files associated with approved BPOCs shall be maintained for audit review by CLEET upon request by a representative of CLEET.

(e) BPOC Directors are responsible for submitting documentation to CLEET of BPOC course completion, and any other documents required by CLEET, prior to a student taking the qualification examination.

(f) BPOC Directors are responsible for providing the following documentation to CLEET within fifteen (15) calendar days following the completion of each basic law enforcement academy class:

- (1) A final roster of graduates and their social security numbers;
- (2) Student Academic and proficiency scores from all examinations and proficiency tests; and
- (3) A final course schedule clearly indicating the actual instructors of each unit of instruction.

### **390:15-4-6. Curriculum mandates**

(a) The curriculum of the Basic Academy, and through association the BPOC, is established by the Curriculum Review Board. The curriculum shall include functional areas as prescribed by the Council through the Curriculum Review Board. Functional areas may include, but shall not be limited to the following:

- (1) Orientation/Legal Matters
- (2) First Aid
- (3) Firearms
- (4) Criminal Investigation
- (5) Custody Control and Defensive Tactics
- (6) Traffic
- (7) Patrol
- (8) Community Relations
- (9) Law Enforcement Driver Training
- (10) DWI Detection and Standardized Field Sobriety Testing (SFST)
- (11) Radar

(12) Ethics

(b) CLEET shall make functional area instructional objectives, as well as current Basic Academy lesson plans, available to all BPOC entities. BPOC entities shall abide by the provisions of 70 O.S., subsection 3311.16 (D). BPOC entities may utilize a collegiate accredited First Aid course and a collegiate accredited CPR course as a substitute for CLEET's First Aid course.

### **390:15-4-7. Course testing**

(a) All academic BPOC course testing shall be subject to the entity's testing and grading system with the exception that under no circumstances shall a course grade of less than 80 percent for First Aid, and successful achievement on other cognitive examinations or performance tests shall be at a standard established by CLEET for a course offering which contains a portion of the CLEET basic Academy instructional goals and objectives.

(b) BPOC skills training courses shall meet the minimum grading standards set forth for the CLEET Basic Academy skills training programs.

(c) Practical application exercises may be evaluated at a standard established by the BPOC entities approved by the Council to conduct outside of classroom training.

### **390:15-4-8. Qualification examination**

(a) The CLEET qualification examination, administered to BPOC students by an authorized CLEET representative, is a comprehensive objective examination which covers, at a minimum, those topical areas set forth in OAR 390:15-1-2 and 390:15-3-6. Should additional topical areas be added, the qualification examination may be expanded to cover such additions.

(b) The qualification examination shall be administered at the conclusion of the two CLEET training facility training sessions (one in the spring and one in the fall).

(c) Students who pass the qualification examination shall have two years from the date they pass the qualification examination to obtain a commission or appointment with recognized Oklahoma law enforcement agency. Certification shall be withheld until they have been commissioned and all requirements of 70 O.S., subsection 3311 have been met.

(d) Successful achievement of the qualification examination will be at a standard established by CLEET.

(e) Students who fail their initial qualification examination may be given only one retest.

### **390:15-4-9. Instructor requirements**

(a) Skills area instructors of record, or lead instructors, are required to meet the instructor specifications set forth in OAR 390:25-1-9 through 390:25-1-12.

(b) Instructors of record (lead instructors) shall attend and complete a CLEET three (3) day skills refresher/update course for instructing in a basic academy setting (the academy first day classroom, and the two days thereafter) once every three years. This requirement may be accomplished during any

CLEET approved basic law enforcement academy offered in the state.

(c) Skills instructors who are not lead instructors or instructors of record, shall meet the CLEET specialized instructor requirements set forth in OAR 390:25-1-9 through 390:25-1-12. They must also assist in a CLEET basic academy or an approved city/agency basic academy every three years.

(d) Instructors who teach in the BPOC shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in the assigned subject area.

(e) Instructors for portions of the BPOC legal block identified by CLEET must be taught by an attorney currently licensed by the Oklahoma Bar Association.

**390:15-4-10. Student responsibilities**

(a) All students admitted to a BPOC must meet the admission requirements of the Council approved state-supported technology center school or higher education institution entities.

(b) BPOC students must meet the requirements set forth in 70 O.S., Section 3311 and the requirements set forth in 390:10-1-4.

(c) BPOC student class absences shall be recorded in accordance with individual training entity's policies.

(d) BPOC tract students shall be accountable for 100 percent participation in skills level courses.

(e) Prior to enrolling in a BPOC course, students shall request a current local records check from their county of residence and the Oklahoma State Bureau of Investigation, and shall submit the returns to the BPOC school Director prior to the first day of training.

(f) BPOC students must present a picture identification when taking the qualification examination.

(g) BPOC students must successfully complete all BPOC course work and successfully pass the qualification examination at a standard established by CLEET to be eligible for peace officer certification.

(h) BPOC students who do not complete the BPOC curriculum have one year to complete the training from the date the student began the BPOC training. If the student fails to complete the training within one year, the student shall be required to retake the training, paying again for the training.

**390:15-4-11. Psychological evaluations**

(a) Prior to the first day of training, all students shall be administered a Minnesota Multi-Phasic Personality Inventory (MMPI), or a CLEET approved equivalent psychological examination, by a person qualified to administer such examinations. Examinations shall be evaluated by a licensed psychologist of each student's choice and at each student's expense. The results of the psychological evaluations shall be forwarded to the BPOC Director, by the evaluating psychologist on forms to be provided by CLEET.

(b) If, after evaluating this initial psychological testing instrument, an evaluating psychologist is not able to form an

opinion as to whether or not an applicant is "at risk" or "capable" of exercising appropriate judgement, restraint, and self-control in the use of a firearm, the the psychologist will "employ whatever other psychological measuring instruments or techniques deemed necessary to form his professional opinion". For the purposes of this subsection, an evaluating psychologist is not necessarily obliged to find an applicant "at risk", by virtue of deficiencies in any particular area (judgement, restraint, and self-control), but may consider the applicant's psychological traits in light of all three areas in formulating his opinion.

(c) Any additional testing shall be done through mutual agreement between the psychologist and the applicant, and at the expense of the applicant.

(d) In the event that the evaluating psychologist is unable to form an opinion (either "at risk" or "capable"), or in the event an applicant does not agree to any further testing, the evaluating psychologist may so indicate on the "Notification of Psychological Evaluation for Peace Officers Full-Time and Reserve." In such cases, the applicant's psychological evaluation shall be treated in the same manner as an "at risk" evaluation, pursuant to the Act.

(e) No psychological evaluation shall be accepted as valid for the purposes of this Act when the following conditions have not been satisfied:

(1) The evaluation results may be used for up to one (1) year from the date of the evaluation; and

(2) The evaluation must have been performed for the specific purpose of evaluating an applicant's capability of exercising appropriate judgement, restraint, and self-control in the use of a firearm.

**SUBCHAPTER 5. RESERVE OFFICER BRIDGE ACADEMY**

**390:15-5-2. Eligibility**

(a) Beginning January 1, 2014, any reserve officer who has completed a CLEET two-hundred-forty-hour reserve peace officer certification program, and who has been in active service in a reserve capacity in the past two (2) years, for the past six (6) months shall be eligible to attend a Bridge Academy pursuant to 70 O.S., Section 3311 ~~(E)(2)(C)~~ to become certified as a full-time police or peace officer.

(b) The individual officer must meet the full-time employment standards found in CLEET Rules 390:10-1-2.

**390:15-5-7. Bridge Academy participation**

(a) All trainees shall be capable of full participation and fully participate in all Bridge Academy activities.

(b) All trainees shall be required to score a minimum of seventy percent (70%) on a reading, writing and comprehension examination pursuant to 70 O.S. 3311.11.

(c) All trainees shall be required to score a minimum of seventy percent (70%) on a physical assessment test pursuant to 70 O.S. 3311.11.

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(d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11 whereby the trainee promises to repay the note by remaining in the law enforcement profession in the state of Oklahoma as a full-time peace officer for four (4) years following graduation from the basic law enforcement academy.

(e) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

[OAR Docket #19-541; filed 6-4-19]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 20. RESERVE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #19-542]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

390:20-1-2 [AMENDED]

390:20-1-3.1 [AMENDED]

390:20-1-16 [AMENDED]

### AUTHORITY:

Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.16; 20 O.S., § 1313.2.

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January 7, 2019

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### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Amendment to 390:20-1-2 Reserve officer defined; employment standards, (a) (4) ~~May be appointed by any political subdivision of this state to serve as an auxiliary police or peace officer pursuant to the Oklahoma Civil Defense Act [63 O.S. 683.1 et. seq].~~ Adding verbiage to (d) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council CLEET, the their current mailing addresses, address, and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number must be made within ten (10) days of the effective change, in writing, with an original signature. Notices will not be accepted over the phone, by fax, or by email. (e) ~~Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.~~ All peace officers, reserve officers, and tribal officers shall notify, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will

not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.

Amendments to 390:20-1-3.1 Reserve coordinator qualifications, (a) add (6) If a Reserve Coordinator that has not conducted a reserve academy within the last five (5) years, the coordinator will be required to attend a current Reserve Coordinator School prior to being given approval to conduct a reserve academy.

Amendments to 390:20-1-16 Reserve Academy Instructor requirements, (b) ~~Instructors of record are required to participate as an instructor in the appropriate skills training block of a CLEET Basic Academy or CLEET approved academy city/agency basic academy, at least one time in the year preceding their scheduled participation as a reserve academy skills instructor. (lead instructors) shall attend and complete a CLEET three (3) day skills refresher/update course for instructing in a basic academy setting (the academy first day classroom, and the two days thereafter) once every three years. This requirement may be accomplished during any CLEET approved basic law enforcement academy offered in the state. (e) To remain active as a lead reserve academy skills instructor, lead reserve academy skills instructors must instruct annually within a CLEET or approved academy city/agency basic academy.~~

### CONTACT PERSON:

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

### 390:20-1-2. Reserve officer defined; employment standards

(a) For the purposes of this Chapter, and pursuant to 70 O.S., Section 3311, a reserve peace officer shall mean a law enforcement officer who:

(1) May be appointed by a municipality [11 O.S. 34-101], a duly elected sheriff [19 O.S. 547], or any other agency authorized by statute to appoint such reserve peace officers.

(2) May not work as a reserve peace officer more than one hundred forty (140) hours per month unless authorized by 11 O.S. 34-101 or 19 O.S. 547.

(3) May be paid a wage or salary, or may serve as a volunteer for the appointing agency.

~~(4) May be appointed by any political subdivision of this state to serve as an auxiliary police or peace officer pursuant to the Oklahoma Civil Defense Act [63 O.S. 683.1 et. seq].~~

~~(5) May have the same powers, duties, and functions as regular full-time peace officers, or as prescribed by state laws, or the ordinances of the appointing municipality.~~

(b) Employment standards for reserve peace officer certification shall be the same as the employment standards for full-time peace officers, as set forth in 70 O.S. Section 3311, and in 390:10-1-4.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee. Peace officers granted an extension of

time to attend and complete a reserve training academy are not permitted to work in the capacity of a peace officer during the extension period.

(d) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council—CLEET, the their current mailing addressesaddress, and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number must be made within ten (10) days of the effective change, in writing, with an original signature. Notices will not be accepted over the phone, by fax, or by email.

(e) Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone. All peace officers, reserve officers, and tribal officers shall notify, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.

(f) All trainees shall be required to score a minimum of seventy percent (70%) on a reading and writing comprehension examination pursuant to 70 O.S. Section 3311.11.

**390:20-1-3.1. Reserve Coordinator Qualifications**

- (a) All reserve academy coordinators must:
  - (1) Be a certified full-time, salaried peace officer as set forth in 70 O. S. 3311.
  - (2) Have a minimum of two years of law enforcement experience after certification as a peace officer.
  - (3) Be employed by a municipal, county, state or tribal law enforcement agency.
  - (4) Be CLEET certified basic instructors.
  - (5) Successfully complete a CLEET Reserve Academy Coordinators' school prior to being given approval to conduct a reserve academy.
  - (6) If a Reserve Coordinator has not conducted a reserve academy within the last five (5) years, the coordinator will be required to attend a current Reserve Coordinator School prior to being given approval to conduct a reserve academy.

(b) The director or the director's designee may grant reserve academy coordinator status to an individual who has completed comparable training, education or experience that equal or exceed the qualifications for reserve academy coordinator.

**390:20-1-16. Reserve academy instructor requirements**

(a) Skills area instructors of record, or lead instructors, are required to meet the instructor specifications set forth in 390:25-1-9 through 390:25-1-12.

(b) Instructors of record are required to participate as an instructor in the appropriate skills training block of a CLEET Basic Academy or CLEET approved academy city/agency basic academy, at least one time in the year preceding their scheduled participation as a reserve academy skills instructor (lead instructors) shall attend and complete a CLEET three (3) day skills refresher/update course for instructing in a basic academy setting (the academy first day classroom, and the two days thereafter) once every three years. This requirement may be accomplished during any CLEET approved basic law enforcement academy offered in the state.

(e) To remain active as a lead reserve academy skills instructor, lead reserve academy skills instructors must instruct annually within a CLEET or approved academy city/agency basic academy.

(d) Skills instructors who are not lead instructors or instructors of record, shall meet the CLEET specialized instructor requirements set forth in 390:25-1-9 through 390:25-1-12, and must instruct within a CLEET or approved academy city/agency basic academy every three (3) years.

(e) Instructors, other than skills instructors, shall meet the requirements set forth in 390:25-1-9 through 390:25-1-12.

(f) Instructors for portions of the reserve academy legal block identified by CLEET must be taught by an attorney currently licensed by the Oklahoma Bar Association.

*[OAR Docket #19-542; filed 6-4-19]*

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION**

*[OAR Docket #19-543]*

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**RULES:**  
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390:25-1-3 [AMENDED]  
390:25-1-8 [AMENDED]  
390:25-1-18 [AMENDED]

**AUTHORITY:**  
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# Permanent Final Adoptions

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Amendments to 390:25-1-1 Purpose, (c) remove the word ~~accredited~~ and replace with the word cataloged.

Amendments to 390:25-1-3 Enrollment and tuition, (a) **Who may attend.** ~~Full-time, certified~~ Certified peace officers shall have enrollment priority in CLEET Continuing Education Schools and Seminars. If classroom space is available, ~~reserve-retired certified~~ peace officers, ~~retired-certified peace officers, who are~~ instructors ~~who~~ and are maintaining their instructor certifications, non-sworn employees of a law enforcement agency, ~~employees,~~ and others who work directly with law enforcement may enroll in such schools and seminars. CLEET shall reserve the right to restrict certain schools and seminars, ~~to full-time, certified peace officers only,~~ based on the subject of the school, the content and subject, to certified peace officers.

Amendments to 390:25-1-8 Outside law enforcement schools and seminars, (a) (1) CLEET shall maintain a centralized depository of training records for ~~each full-time, certified~~ every peace officer, reserve and fulltime, ~~in~~ which has been certified by the State of Oklahoma, as either a reserve or fulltime peace officer in accordance with applicable Oklahoma statute. Schools and Seminars attended by such officers may be entered into their individual training files upon request.

Amendments to 390:25-1-18 Point computation formula, language added to (c) Each semester hour of college credit from an Accredited College or University shall equal one training point; each quarter hour shall equal two-third point.

## CONTACT PERSON:

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

## PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:

### 390:25-1-1. Purpose

(a) The purpose of this chapter is to set forth the procedures governing continuing law enforcement education as it relates to full-time peace officers actively employed with a law enforcement agency.

(b) This chapter outlines the procedures for enrollment into continuing education classes, instructor qualifications, and documentation of training.

(c) Further, this chapter explains what requirements agencies, other than the Council, must fulfill to have a course ~~accredited~~ cataloged for continuing law enforcement training.

### 390:25-1-3. Enrollment and tuition

(a) **Who may attend.** ~~Full-time, certified~~ Certified peace officers shall have enrollment priority in CLEET Continuing Education Schools and Seminars. If classroom space is available, ~~reserve-retired certified~~ peace officers, ~~retired-certified peace officers, who are~~ instructors ~~who~~ and are maintaining their instructor certifications, non-sworn employees of a law enforcement agency, ~~employees,~~ and others who work directly with law enforcement may enroll in such schools and seminars. CLEET shall reserve the right to restrict certain schools and seminars, ~~to full-time, certified peace officers only,~~ based on the subject of the school, the content and subject, to certified peace officers.

(b) **Tuition and expenses.** Generally, there shall be no tuition or other enrollment fees charged by CLEET for attending Continuing Education Schools or Seminars. Generally, CLEET shall not provide food or lodging to officers or employees attending such schools or seminars. Specific course offerings may require payment of tuition, fees or other expenses.

(c) **Notification of schools.** CLEET shall publish a schedule of Continuing Education Schools on the website. This published schedule shall include the dates, locations, course descriptions, instructors, enrollment procedures, and other information related to the Continuing Education Program. This shall not preclude the scheduling of schools in addition to schools so scheduled.

### 390:25-1-8. Outside law enforcement schools and seminars

#### (a) Centralized peace officer training records.

(1) CLEET shall maintain a centralized depository of training records for ~~each full-time, certified~~ every peace officer, reserve and fulltime, ~~in~~ which has been certified by the State of Oklahoma, as either a reserve or fulltime peace officer in accordance with applicable Oklahoma statute. Schools and Seminars attended by such officers may be entered into their individual training files upon request.

(2) Local "in-service" training or informational sessions of less than one (1) hour shall not be entered.

(3) Requests for individual training record entries shall be in format approved by CLEET.

(4) Requests for training entries shall minimally contain the following documentation:

(A) The date(s), location and title of the school or seminar; and

(B) An official school Attendance Roster or electronic roster, showing the name, CLEET number, and employing agency of each full-time, certified officer in attendance; and

(C) One of the following:

(i) The name and address of the instructor(s); or

(ii) A copy of the completion or attendance certificate issued by the school, and the requesting officer's name, CLEET number, and employing agency and the authorized signature of the agency head or designee certifying attendance.

(D) Training may not be recorded when names provided on the roster or electronic record cannot be matched to CLEET records by the CLEET number or name until additional identifying information is provided.

(E) Agencies or individuals submitting rosters or electronic records shall maintain a file copy, subject to inspection, for a period of three years.

#### (b) Local training incentive accreditation.

(1) For the purposes of this sub-section, "ACCREDITATION" means that CLEET will assign a course catalog

number and send a confirmation letter to the agency requesting such accreditation for a lesson plan submitted by that agency. It will be the responsibility of the agency requesting accreditation to retain the lesson plan and all supporting material. All lesson plans and supporting materials on file with the agency requesting an accreditation number will be considered by CLEET to be copyrighted. Regarding any law enforcement concepts, practices, methods, techniques, products, or devices as might be taught, promoted, or otherwise espoused in outside schools or seminars, there is no intent, expressed or implied, that "accreditation" indicates or in any way conveys "CLEET approval" of such concepts, practices, methods, techniques, products, or devices, unless such approval is explicitly stated by CLEET.

(2) For the purpose of qualifying for training or educational pay increases, or for other training incentives which might be initiated by law enforcement agencies, and for which CLEET accreditation is a requisite, the rules and procedures set forth in (3) and (4) of this subsection shall apply.

(3) Requests for local training incentive accreditation for any outside school or seminar, shall be made in writing in a format approved by CLEET and shall minimally contain the following information:

- (A) A description of the subject of the school or seminar;
- (B) A resume' or summary of each known instructor's qualifications, describing his or her training and experience in the particular subject.

**390:25-1-18. Point computation formula**

- (a) Fifteen training points shall be given for the completion of a Basic Law Enforcement Academy.
- (b) Two training points shall be given for the successful completion of a field training officer program which is ten weeks or longer in length.
- (c) Each semester hour of college credit from an Accredited College or University shall equal one training point; each quarter hour shall equal two-third point.
- (d) Twenty classroom hours of job-related training, as determined by the Council, shall equal one training point.
- (e) Using a table provided by the Council, training points may be substituted for years of experience.
- (f) Using a table provided by the Council, certificates shall be awarded to levels applicants based upon points accumulated and years of experience.

[OAR Docket #19-543; filed 6-4-19]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 30. CDS DETECTOR DOG CERTIFICATION**

[OAR Docket #19-544]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
390:30-1-2 [AMENDED]  
390:30-1-6 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training: 70 O.S., § 3311 through 3311.16; 20 O.S., § 1313.2.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
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**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Amendments to 390:30-1-2 Definitions, CDS detector canine team, However, it shall not be construed, except in the case of an Oklahoma Department of Corrections CDS detector canine team used solely for and by the Oklahoma Department of Corrections, to mean a team in which the canine is certified for simultaneous use with more than a single handler.

Amendments to 390:30-1-6 CDS Detector Dog Certification, (k) remove the word issuance and replace with evaluation.

**CONTACT PERSON:**  
Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**390:30-1-2. Definitions**

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

"Alert" means a positive response.

"Canine team" means the handler and the CDS detector dog.

"CDS" means Controlled Dangerous Substance.

"CDS detector canine team" means the handler and the CDS detector dog. However, it shall not be construed, except

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in the case of an Oklahoma Department of Corrections CDS detector canine team used solely for and by the Oklahoma Department of Corrections, to mean a team in which the canine is certified for simultaneous use with more than a single handler.

**"CDS detector dog"** means a dog trained to detect the scent of controlled dangerous substances in a variety of environments.

**"Certification/recertification"** means confirmation, through field performance testing, of a CDS detector dog's ability to detect controlled dangerous substances in accordance with standards designated by CLEET.

**"CLEET"** means administrative staff of the Council on Law Enforcement Education and Training.

**"Controlled Dangerous Substance"** means a drug, substance or immediate precursor in Schedules of I-V of the Uniform Controlled Dangerous Substances Act (Title 63, Sections 2-204 through 2-210, of the Oklahoma State Statutes).

**"Dog"** means animals of the canine or "canidae" family.

**"False response"** occurs when a dog being tested registers a positive response to an area where no CDS exist.

**"Find rate"** means the percentage of positive responses registered by a dog being tested for certification.

**"Handler"** means a person who has received training in the handling of CDS detector dogs, and is in control of the Dog being tested.

**"Handler error"** occurs when a dog being tested has made a positive response and the Handler apparently fails to recognize it, and leads the dog away from the area.

**"Negative response"** occurs when a dog being tested fails to respond to an area where CDS is known to exist.

**"OBND"** means Oklahoma Bureau of Narcotics and Dangerous Drugs.

**"Positive response"** occurs when a dog being tested registers a response to an area where CDS is known to exist, with no assistance of a Handler.

**"Training aid"** means a container holding predetermined amount of CDS which shall be used for evaluating the performance of dogs being tested.

### 390:30-1-6. Application for certification

(a) Any person, group, or organization, public or private, that utilized canine teams for the purposes of detecting controlled dangerous substances, as a public service or for private gain, shall be required to annually obtain CLEET certification for such canine teams. Certification as to the demonstration abilities of any such canine team shall be based on evaluation of the canine team's performance during field tests.

(b) Persons wishing to seek CLEET CDS detector canine team certification may receive an application and instructions by calling or making a written request to CLEET administrative offices.

(c) Applicants must submit the application and appropriate test fee to CLEET.

(d) All applications must be completely filled out and be accompanied by two (2) full-body, color photographs of the applicant canine team and any other information required by

CLEET. The photographs shall include the full side-body of the dog and the face of the handler.

(e) Normally, no more than ten (10) applicant dogs shall be scheduled for testing on any date.

(f) Upon completion of CDS detector canine team testing, the owner/handler of each dog shall be informed as to the examiner's evaluation of the canine team's performance.

(g) Canine teams that fail to successfully complete the CDS detector tests in accordance with the required standards of performance may not be retested until seven (7) days from the last attempt, and must submit the retest fee to CLEET prior to testing.

(h) Canine teams that successfully complete CDS Detection tests in accordance with the required standards of performance shall be notified in writing by CLEET.

(i) When CLEET has determined that all application procedures are fully complete; the applicant canine team has met all required performance standards; and the correct certification fee has been received, a CDS detector canine team certificate shall be issued by CLEET.

(j) Any time a certified CDS detector canine team is being employed or otherwise utilized in CDS detection activities, the CLEET CDS detector canine team certificate, or a copy thereof, shall be immediately available for inspection by any interested party.

(k) CLEET CDS detector canine team certification shall remain effective for a period of one year from the date of issuance ~~is~~ evaluation. Upon renewal of a license that has not yet expired, the renewal date of that license will be the same month and day as the previous year.

(l) CDS detector canine teams shall be recertified annually. Application for renewal and the process of testing and performance evaluation shall be conducted in the same manner as the original certification. Application for recertification should be initiated not less than thirty (30) days prior to the expiration date of the previous certificate.

(m) All CDS detector canine team certifications that are not renewed shall be inactivated by CLEET. If a renewal of an expired certification is not initiated by the canine team within thirty (30) days from the expiration date of the certificate, the canine team shall be required to remit the full two hundred dollars (\$200.00) certification test fee to reinstate the certification status of the canine team concerned. Application and testing procedures in such cases shall be conducted in the same manner as an original certification.

(n) When any canine team certified under these laws and rules will no longer be utilized in the performance of CDS detection activities, the owner of such dog or the handler shall notify CLEET in writing.

(o) CDS detector canine teams owned by or used solely by a bona fide law enforcement agency for CDS detection activities in the service of the public shall be exempt from the certification fees herein, but shall be required to certify such canine teams annually in accordance with the laws and the rules of this section, unless such canine teams are certified annually by the United States Custom Service.

[OAR Docket #19-544; filed 6-4-19]

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY**

[OAR Docket #19-545]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 5. License Requirements  
390:35-5-2 [NEW]  
390:35-5-8 [AMENDED]  
390:35-5-13 [AMENDED]
- Subchapter 7. Application Procedure  
390:35-7-3 [AMENDED]  
390:35-7-4 [AMENDED]
- Subchapter 9. Violations and Investigations  
390:35-9-7 [NEW]

**AUTHORITY:**

Council on Law Enforcement Education and Training; 59 O.S., § 1350.1 et seq.; 59 O.S., § 1750.1 through 1750.14; 70 O.S., § 3311 et seq.

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Subchapter 5. License Requirements:

New Rule 390:35-5-2 (a) Applicants for security guard, private investigator or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act. (b) Applicants for Armed Security Guard or armed private investigator licenses must further: (1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation. (2) Successfully complete the firearms phase of private security training; (3) Be twenty-one (21) years of age. (c) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment. (d) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

Amendments to 390:35-5-8, Licensure of private investigators to carry a firearm, (c) Any person issued a valid private investigators license with a firearms authorized endorsement, may carry a ~~concealed weapon~~ firearm in accordance with the provisions of 59 O.S. Section 1750.5 (C).

Amendments to 390:35-5-13 Notification of change of name or address or telephone number, (b) Private investigators and security guards shall notify, in writing, with an original signature, ~~the Council~~ CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will not

be accepted over the phone, by fax, or by email - and must be made within (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.

Amendments to 390:35-7-3 Accuracy and completeness of application, (c) If an application is incomplete, CLEET will process any payments in accordance with statutory requirements, and will notify the applicant that the application is incomplete. Upon receipt of the notification that the application is deficient, the applicant will have thirty (30) days to provide needed documents or make the necessary corrections. At the end of the thirty (30) day application period, and absent substantive progress toward providing documents or information necessary to complete the application, CLEET will return the ~~application~~ and application fees less the established processing fees. CLEET will offer no further consideration of the returned incomplete application.

Amendments to 390:35-7-4 Background investigation of applicants, (a) Appendix A of this Chapter, ~~shall~~ may be deemed as disqualifying convictions.

Subchapter 9. Violations and investigations add 390:35-9-7 Reinstatement of License

New Rule 390:35-9-7 Reinstatement of License. (a) A Security or Investigator license that has been revoked may not be reinstated. (b) If a Security or Investigator license has been suspended, the Licensee may apply for reinstatement after the term of suspension has passed. (1) The applicant for reinstatement must show that all other qualifications for licensing have been met. (2) An application for reinstatement must be accompanied by a non-refundable fee in the amount set in Appendix 'D'.

**CONTACT PERSON:**

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 5. LICENSE REQUIREMENTS**

**390:35-5-2. Security guard, armed security guard, and private investigator licenses**

(a) Applicants for security guard, private investigator or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act.

(b) Applicants for Armed Security Guard or armed private investigator licenses must further:

(1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.

(2) Successfully complete the firearms phase of private security training;

(3) Be twenty-one (21) years of age.

(c) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.

(d) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

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## 390:35-5-8. Licensure of private investigators to carry a firearm

- (a) Licensed private investigators who wish to carry a firearm and performs no security guard functions, must obtain a "firearms authorized", endorsement on the private investigator's license. Private investigators who also work as an armed security guard must obtain an armed security guard and private investigator's license, or a combination license.
- (b) Private Investigators seeking firearms authorization who perform no security guard duties, must satisfy and meet all training and licensing requirements for a private investigator's license and complete all training and testing requirements for Phase IV firearms training.
- (c) Any person issued a valid private investigators license with a firearms authorized endorsement, may carry a ~~concealed weapon~~firearm in accordance with the provisions of 59 O.S. Section 1750.5 (C).

## 390:35-5-13. Notification of change of name or address or telephone number

- (a) Private investigators, and security guards shall maintain, with the Council, a current residential address and a current telephone number. Notice of change of address or telephone number must be made in writing, with an original signature within ten (10) days of the effected change. Notices will not be accepted over the phone by fax, or by email.
- (b) Private investigators and security guards shall notify, in writing, with an original signature, ~~the Council~~ CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email, and must be made within (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval.
- (c) The Agency owner or branch manager (in the instances of national corporations) shall notify the Council in writing, with an original signature of changes in the business address and/or telephone number within 10 days of the effective date of the change. Notices will not be accepted over the phone, by fax, or by email.
- (d) Failure to notify the Council of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation.
- (e) If failure to comply with this Chapter results in Council Action, the use of "lack of notice" shall not be deemed as a valid defense in any proceeding.

## SUBCHAPTER 7. APPLICATION PROCEDURE

## 390:35-7-3. Accuracy and completeness of application

- (a) All information on an application form or any related document must be accurate to the best of the applicant's knowledge.
- (b) All sections of the application that are applicable to the applicant must be completed, and all applicable spaces must be filled in with the appropriate information.
- (c) If an application is incomplete, CLEET will process any payments in accordance with statutory requirements, and will notify the applicant that the application is incomplete. Upon receipt of the notification that the application is deficient, the applicant will have thirty (30) days to provide needed documents or make the necessary corrections. At the end of the thirty (30) day application period, and absent substantive progress toward providing documents or information necessary to complete the application, CLEET will return the ~~application and~~ application fees less the established processing fees. CLEET will offer no further consideration of the ~~returned incomplete~~ application.
- (d) CLEET will not give any person legal advice and will not request or gather documents for an applicant. Accuracy and completeness of the application is the obligation of the applicant.
- (e) Since CLEET does not wish to deny any person the opportunity to apply for a license, CLEET will not give advisory opinions as to whether a person will or will not be licensed. Decisions on licensing will be made only after receipt of a completed application.

## 390:35-7-4. Background investigation of applicants

- (a) The requirements of the Act will necessitate an investigation into the personal history, employment history, and moral character of each applicant. Local, state, and federal criminal indices will be examined in the normal processing of applications for evidence of any prior criminal record. In addition to those offenses set forth in the Statutes, convictions of crimes set forth in Appendix A of this Chapter, ~~shall~~may be deemed as disqualifying convictions.
- (b) Failure to provide the information necessary to complete this background investigation, including certified copies of final dispositions, shall preclude any further processing and shall result in denial of said application.
- (c) Fingerprint cards or electronically captured fingerprints submitted by an applicant which have been rejected by the Oklahoma State Bureau of Investigation (OSBI) or Federal Bureau of Investigation (FBI), have failed to meet the statutory requirement of 59 O. S. Section 1750.6 (A)(1) for providing "classifiable fingerprints to enable the search of criminal indices for evidence of prior criminal record".
  - (1) Upon notice to CLEET from the OSBI or FBI that fingerprints have been rejected, CLEET shall send written notice to the applicant requesting resubmission of fingerprints.
  - (2) Failure to resubmit fingerprints within thirty (30) days of the request for resubmittal shall preclude any further processing and shall result in denial, suspension or revocation of any license held by the applicant.

(3) Upon the third rejection of fingerprints by the OSBI or FBI or the expiration of one-hundred-eighty days (180) days, whichever occurs first, from the original date of issuance of any license, such license shall be suspended or revoked until such time that classifiable fingerprints have been submitted and criminal history reports have been received from OSBI and FBI.

(d) An applicant shall state any and all names previously used by the applicant, and the date of any name change.

(e) An applicant shall provide information on any previous licenses held as a private security guard or private investigator, whether in this state or other state, and any previous revocations or suspensions of any such license.

(f) No license shall be issued under the following circumstances:

(1) A disqualifying charge is pending in any court in this state, another state, tribal court, or pursuant to the United States Code.

(2) The applicant is subject to the provisions of a deferred sentence or deferred prosecution in any court in this state, another state, tribal court, or pursuant to federal authority for the commission of any disqualifying offense. The preclusive period shall be for five (5) years and shall begin upon the final determination of the matter.

(g) An applicant who has been reported to CLEET to have been involuntarily committed at anytime, will be notified in writing of the alleged involuntary commitment along with the applicant's employer. The applicant shall provide to CLEET written notification of a psychological evaluation conducted by a licensed physician or psychologist which attests and states by affidavit that the licensee and the evaluation test data of the licensee have been examined and that, in the professional opinion of the physician or psychologist, the licensee is psychologically suitable to be a security guard or private investigator.

**SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS**

**390:35-9-7. Reinstatement of License**

(a) A Security or Investigator license that has been revoked may not be reinstated.

(b) If a Security or Investigator license has been suspended, the Licensee may apply for reinstatement after the term of suspension has passed.

(1) The applicant for reinstatement must show that all other qualifications for licensing have been met.

(2) An application for reinstatement must be accompanied by a non-refundable fee in the amount set in Appendix 'D'.

*[OAR Docket #19-545; filed 6-4-19]*

**TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING  
CHAPTER 40. OKLAHOMA SELF-DEFENSE ACT**

*[OAR Docket #19-546]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Instructor Approval  
390:40-5-2 [AMENDED]

**AUTHORITY:**  
Council on Law Enforcement Education and Training: 70 O.S., § 3311 through 3311.16; 20 O.S., § 1313.2.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
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n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Subchapter 5. Instructor Approval  
Amendment to 390:40-5-2 Instructor training requirements, (1) verbiage was added, (C) Oklahoma Rifle Association (D) federal law enforcement agencies; or (E) other professionally recognized organizations.

**CONTACT PERSON:**  
Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 5. INSTRUCTOR APPROVAL**

**390:40-5-2. Instructor training requirements**

Prior to making application with CLEET as an approved instructor, applicants will be required to attend a firearms instructor school meeting the following minimum requirements:

- (1) Firearms instructor training conducted by one of the following:
  - (A) CLEET;
  - (B) National Rifle Association;
  - (C) Oklahoma Rifle Association

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- (D) federal law enforcement agencies; or
- (DE) other professionally recognized organizations.
- (2) course shall be at least sixteen (16) hours in length;
- (3) upon completion of course, be qualified to instruct in revolver, semi-automatic pistol, or both; and
- (4) receive a course completion certificate.

[OAR Docket #19-546; filed 6-4-19]

## TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 60. REGULATING BAIL ENFORCERS

[OAR Docket #19-547]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. Disciplinary Actions  
390:60-7-5 [AMENDED]

### AUTHORITY:

Council on Law Enforcement Education and Training; 59 O.S., § 1301, 1303, 1327, 1328, 1329, 1332 and 1332.1.1; 59 O.S., §1350.1 through 1350.20; 59 O.S. §1750.2A, 1750.5, 1750.14; 70 O.S., § 3311 et seq.

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### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Amendments to 390:60-7-5 Notification of change of name or address or telephone number, (a) Bail Enforcers must maintain with CLEET current office and residential addresses and must notify CLEET in writing, of any change of address, with an original signature, of any change of address. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. (b) Bail Enforcers must notify CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name, and an original, signed, request that the name be changed in CLEET records, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified

copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval. (e) Notice of change of name or address or telephone number must be made within ten (10) days of the effected change. Notices will not be accepted over the phone.  
**CONTACT PERSON:**

Shelly Lowrance, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, shelly.lowrance@cleet.state.ok.us or 405-239-5152.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 7. DISCIPLINARY ACTIONS

### 390:60-7-5. Notification of change of name or address or telephone number

(a) Bail Enforcers must maintain with CLEET current office and residential addresses and must notify CLEET in writing, of any change of address, with an original signature, of any change of address. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change.

(b) Bail Enforcers must notify CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name, and an original, signed, request that the name be changed in CLEET records, in writing, with an original signature, CLEET of any change of name. Notification of change of name shall include certified copies of any marriage license or court document which reflects the change of name. Notices will not be accepted over the phone, by fax, or by email and must be made within ten (10) days of the date of change. The certified copy provided to CLEET will not be returned to the licensee. Any deviation from this Rule will require the Director's or his/her designee's approval. (e) Notice of change of name or address or telephone number must be made within ten (10) days of the effected change. Notices will not be accepted over the phone.

(dc) Any change in address must include both the physical location (Street Address) and the mailing address, if different.

(ed) Failure to notify CLEET of business address changes, business telephone changes, or residential address changes, in accordance with the provisions of this Section, shall be considered a violation and may result in CLEET disciplinary action.

[OAR Docket #19-547; filed 6-4-19]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC) ORGANIZATIONS AND FACILITATORS

[OAR Docket #19-551]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
450:21-1-5. Compliance with laws, rules [AMENDED]
450:21-1-6. Applications [AMENDED]
450:21-1-7. Minimum curriculum requirements, ten (10) hour courses [AMENDED]
450:21-1-7.2. Minimum curriculum requirements, twenty-four (24) hour courses [AMENDED]
450:21-1-9.1. Physical facility environment and safety [AMENDED]
450:21-1-10. ADSAC facilitator certification, qualification and disqualification [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-451 through 3-453.1; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

March 29, 2019

COMMENT PERIOD:

February 1, 2019 through March 4, 2019

PUBLIC HEARING:

March 5, 2019

ADOPTION:

March 28, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 29, 2019

LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:

May 28, 2019

EFFECTIVE:

November 1, 2019

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules revise application requirements, minimum curriculum requirements as well as increase the time that certified assessors must keep client records from 5 years to 6 years. Rules also raise the threshold that providers must meet in order to obtain certification from 51% to 75% on clinical standards.

CONTACT PERSON:

Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

450:21-1-5. Compliance with laws, rules

- (a) All institutions, organizations and facilitators certified by ODMHSAS to conduct ADSAC courses shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules of Title 450 OAC.
(b) Each applicant for ADSAC facilitator shall declare in writing, in a format and manner prescribed by the Commissioner of ODMHSAS, or designee, that he or she has read and understands §§ 3-451 through 3-461 of Title 43A of the Oklahoma Statutes and this Chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.
(c) ODMHSAS shall process all applications for certification and recertification and enforce these standards and criteria (rules) in this Chapter, and related laws.
(d) Approved institutions, organizations and facilitators shall not make reference to ODMHSAS or DPS in any advertisement regarding ADSAC. Advertising shall be truthful in all communication with prospective participants. Implication of exclusive services by any one organization is prohibited.
(e) All institutions, organizations and facilitators certified to conduct ADSAC courses must promptly notify ODMHSAS of a change of email, mailing or physical address within fourteen (14) days of said change.
(f) The fees for those attending a ten (10) hour ADSAC course shall be one hundred and fifty dollars (\$150.00) per participant; and for persons attending the twenty-four (24) hour courses the fee shall be three hundred and sixty dollars (\$360.00).
(g) The ADSAC institution or organization shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.
(h) The payment from the fee collected for each ADSAC course participant shall be made to ODMHSAS within thirty (30) days of course completion.
(i) A check for the appropriate fee shall accompany the completion roster, unless otherwise stipulated in writing by ODMHSAS.
(j) Compliance with this Chapter may be determined by a review of all ADSAC-related records; documents and reports; facilitator, staff and participant interviews; and any other relevant documentation of the institution, organization or facilitator.

450:21-1-6. Applications

- (a) Applications for certification of institutions, organizations or facilitators to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

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(b) ODMHSAS shall give each institution, organization and facilitator candidate requesting certification to conduct ADSAC courses the following:

- (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
- (2) A copy of these standards and criteria; and
- (3) The appropriate application(s).

(c) An institution or organization applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

- (1) Completed application;
- (2) Film approval form(s) for the ten (10) and twenty-four (24) hour ADSAC;
- (3) Instructional materials for the ten (10) and twenty-four (24) hour ADSAC;
- (4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;
- (5) Completed certification applications and resumes of proposed facilitators;
- (6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and
- (7) Letters of support from at least two (2) of the following individuals who serve in the community in which each proposed site, including satellites, is located:
  - (A) District or Associate District Judge;
  - (B) County Sheriff;
  - (C) Municipal Judge;
  - (D) District or Assistant District Attorney; or
  - (E) Chief of Police.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization need not submit items previously submitted that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC institutions or organizations shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification as well as any unpaid fees required by 450:21-1-5(g). Applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.

(g) In addition to submitting an application and fulfilling the renewal standards for certification per 21-1-6(f), a review of

consumer and organization documentation shall be performed. A score of at least 75% on clinical standards must be achieved in order to move forward with certification. The process will follow that of agency certifications found in Title 450:1-9-7.2. All deficiencies must be resolved in order for certification to be renewed.

(h) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:

- (1) A letter of recommendation from an administrator of a certified institution or organization;
- (2) A current resume, which shall include:
  - (A) Educational background including an official college transcript from an accredited college or university; and
  - (B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).
- (3) A completed application.
- (4) A one hundred dollar (\$100.00) application fee for initial certification; and
- (5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;
- (6) Provide a current, recognizable, color, photographic image, in good condition, no smaller than two (2) inch by two (2) inches of the applicant every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008; and
- (7) A new OSBI background check must be submitted every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008. The results of the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification. This will be required of all individuals who have been certified as ADSAC facilitators for six (6) years or more, recertifying after July, 1, 2008.

(~~h~~i) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.

(~~i~~j) Faxes will not be accepted as permanent copies for an applicant's record.

(~~j~~k) Applications are good for one (1) year from ~~acceptance approval. Training requirements must be completed within nine (9) months of application.~~ All other requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(~~k~~l) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.

(~~l~~m) A facilitator whose certification has been expired for less than twelve (12) months must make application for an

initial certification as set forth in 450:21-1-10, with the exception of attending the initial ADSAC facilitator training, and successful completion of the training exam.

(~~m~~) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, including attending the initial ADSAC facilitator training, and successful completion of the training exam.

(~~o~~) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

**450:21-1-7. Minimum curriculum requirements, ten (10) hour courses**

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC institutions, organizations and facilitators for the ten (10) hour ADSAC course. Any additional materials must be consistent with the format of the main curricula, follow the Transtheoretical Model of Change and prior to implementation receive written approval from ODMHSAS.

(b) The ten (10) hour ADSAC Course shall at a minimum include instruction on:

- (1) Legal aspects of drinking or using other drugs and driving;
- (2) Physiological aspects of using alcohol and other drugs;
- (3) Sociological aspects of using alcohol and other drugs;
- (4) Effects and possible outcomes of drinking or using other drugs and driving;
- (5) Scope of the problem of drinking or using other drugs and driving;
- (6) The history/origins of alcohol and other drugs;
- (7) The effects of substance abuse on family and friends; and
- (8) Alternative plans/strategies to using alcohol or other drugs and driving.

(c) Each curriculum shall provide for a full ten (10) hours of block-teaching classroom instruction, and shall be conducted in no fewer than three (3) sessions with each session no more than three and one half (3.5) hours in duration, and conducted on no fewer than three (3) separate days. These hours shall not be inclusive of:

- (1) Meal or break times; or
- (2) ADSAC administrative functions except for enrollment form completion and fee payment.

(d) Participants may be admitted for fifteen (15) minutes after the official starting time of the class without having to make up this time.

(e) Each curriculum shall provide for a discussion period following each audio-visual presentation. Audio-visual materials shall not comprise more than ten (10) percent of the class and must have been submitted and approved at the time of

application for certification and at each six (6) year anniversary thereafter.

(f) Each ten (10) hour curriculum shall provide for a scored pre- and post-test. The pre-test shall be given during the first two (2) hours of the beginning of each course, and the post-test at the end of each course. The purpose is to determine participant gain in knowledge of the material based upon the scores of the pre and post-tests.

(g) The ADSAC institution, organization or facilitator shall provide each participant a list of community referrals and resources approved by ODMHSAS.

(h) Class size shall not exceed twenty-four (24) participants.

(i) No ten (10) hour ADSAC course shall be combined with, or presented in conjunction with any other educational or clinical class, track, program or assessment process.

**450:21-1-7.2. Minimum curriculum requirements, twenty-four (24) hour courses**

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC institutions, organizations and facilitators for the twenty-four (24) hour ADSAC. Any additional materials must be consistent with the format of the main curricula, follow the Transtheoretical Model of Change and prior to implementation receive written approval from ODMHSAS.

(b) The minimum curriculum requirements for the twenty-four (24) hour ADSAC course includes, but is not limited to, appropriate instruction on:

- (1) Legal aspects of drinking or using other drugs and driving;
- (2) Physiological aspects of using alcohol and other drugs;
- (3) Sociological aspects of using alcohol and other drugs;
- (4) Effects and possible outcomes of drinking or using other drugs and driving;
- (5) Scope of the problem of drinking or using other drugs and driving;
- (6) The history/origins of alcohol and other drug abuse;
- (7) Alternatives to using alcohol or other drugs and driving; and
- (8) The effects of substance abuse on family and friends.

(c) The curriculum shall be covered within the following time-frames:

- (1) Not more than two (2) hours of education on a single day;
- (2) Not more than four (4) hours of education in a single week;
- (3) The time-frames shall not be inclusive of:
  - (A) Meal or break times; or
  - (B) ADSAC administrative functions except for enrollment form completion and fee payment.
- (4) Participants may be admitted up to fifteen (15) minutes after the official time of the class without having to make up the time.

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(d) The curriculum shall provide for a discussion period following each audiovisual presentation. Audiovisual presentation shall not comprise more than ten (10) percent of the class and must have been submitted and approved at the time of application for certification and at each recertification anniversary thereafter.

(e) The curriculum shall provide for a scored pre- and post-test, as prescribed by ODMHSAS. The pre-test shall be given in the first two (2) hour block of classroom facilitation, and the post-test shall be given at the end of the final block of course facilitation. These tests are to determine the participant gain in knowledge of the material based upon the scores of the pre and post-tests.

(f) The ADSAC institution, organization and facilitator shall provide each participant a list of community referrals and resources approved by ODMHSAS.

(g) Class size shall not exceed twenty-four (24) participants.

### **450:21-1-9.1. Physical facility environment and safety**

(a) All institutions and organizations providing ADSAC courses shall ensure the safety and protection of all persons within the institution's or organization's physical environment (property and buildings, leased or owned).

(b) Institutions and organizations shall accomplish this by:

(1) Meeting all fire, health and safety regulations, code and statutory requirements of federal, state, or local government;

(2) All institutions and organizations shall have an annual fire, health and safety inspection, as required from the State Fire Marshal or local authorities, and shall maintain a copy of said inspection and attendant correspondence regarding any deficiency;

(3) If there is no authority available to provide inspection for the institution or organization, then the institution or organization shall show evidence to ODMHSAS of:

(A) An emergency preparedness plan to provide effective utilization of resources to best meet the physical needs of participants, visitors, and staff during any disaster (including, but not limited to, fire, flood, tornado, explosion, prolonged loss of heat, light, water, and/or air conditioning). This plan shall be evaluated annually, and revised as needed;

(B) Training and orientation regarding the location and use of all fire extinguishers and first aid supplies and equipment;

(C) Emergency evacuation routes and shelter areas shall be prominently posted in all areas;

(D) Fire alarm systems shall have visual signals suitable for the deaf and hearing-impaired;

(E) An emergency power to supply lighting to pre-selected areas of the institution or organization; and

(F) Maintenance of institution and organization grounds to provide a safe environment for participants, facilitators and visitors.

(4) There shall be a written plan for the protection and preservation of participant records in the event of a disaster.

### **450:21-1-10. ADSAC facilitator certification, qualification and disqualification**

(a) Minimum qualifications for certification of ADSAC facilitators are as follows:

(1) Possess a bachelor's degree in behavioral or health-care sciences, education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the substance abuse treatment field. This work experience can be in the areas of clinical, prevention or direct care. Proof of current licensure as LADC or certification as CADC will fulfill the experience requirement;

(2) A valid driver's license or state identification card;

(3) Completion of the following in the order listed below:

(A) Observe one (1) complete twenty-four (24) hour ADSAC course in sequential order, conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;

(B) Attend the new facilitator training and pass the ODMHSAS Certification Examination for ADSAC Facilitator; and

(i) a minimal score to pass the exam shall be eighty (80) percent;

(ii) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;

(iii) the exam shall require the participant to correctly identify the major components of the interactive journaling process; and

(iv) the exam shall require the participant to correctly identify rules from this chapter.

(C) Conduct one complete twenty-four (24) hour ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.

(4) The facilitator candidate shall be allowed nine (9) months to complete training requirements and one (1) year from application to complete all other requirements. Failure to meet all requirements within the specified timeframes will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.

(5) Renewal of certification as an ADSAC facilitator shall be dependent upon acceptance of a completed renewal application submitted to ODMHSAS, remission of a fifty dollar (\$50.00) application fee for renewal of certification, and the accomplishment of minimum standards. These standards are:

(A) Each facilitator shall conduct at least six (6) complete ten (10) or twenty-four (24) hour courses during each certification period beginning with the date of initial certification:

(i) To be eligible for recertification as an ADSAC facilitator capable of conducting both ten (10) and twenty-four (24) hour ADSAC courses, verification of having conducted at least two (2) twenty-four hour (24) ADSAC courses in the last

three years prior to the request for recertification; and

(ii) Submission of proof of having conducted less than two (2) twenty-four (24) hour ADSAC courses in the three (3) years prior to the request for recertification, shall result in the facilitator being required to attend a one (1) day training event addressing skills consistent with twenty-four (24) hour course facilitation.

(B) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with four (4) hours coming from area (i), four (4) hours coming from area (ii) and four (4) hours coming from area (iii):

- (i) adult education,
- (ii) facilitation skills,
- (iii) general substance abuse training, and
- (iv) Hours for any mandatory trainings required by ODMHSAS may come from area (iii) above.

(6) All renewals of certification are due on the third anniversary of certification. After July 1, 2008 all certification renewals may come due on January 1 of the renewal year. If a universal certification date is adopted, then, requirements for certification renewals will be accepted on a prorated basis during the transition period.

(b) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:

- (1) A non-pardoned felony conviction within the last five (5) years;
- (2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,
- (3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

[OAR Docket #19-551; filed 6-5-19]

**TITLE 450. DEPARTMENT OF MENTAL  
HEALTH AND SUBSTANCE ABUSE  
SERVICES  
CHAPTER 22. CERTIFICATION OF  
ALCOHOL AND DRUG ASSESSMENT AND  
EVALUATIONS RELATED TO DRIVER'S  
LICENSE REVOCATION**

[OAR Docket #19-552]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- 450:22-1-10. Participant evaluation [AMENDED]
- 450:22-1-11. Standardized evaluation instruments [AMENDED]
- 450:22-1-11.4. Participant record storage, retention and disposition [AMENDED]
- 450:22-1-12. Assessor applicants [AMENDED]
- 450:22-1-15. Assessor responsibilities [AMENDED]
- 450:22-1-20. Inactive status and closure [AMENDED]

**AUTHORITY:**

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-453 and 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. §§ 991a and 991c.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

March 29, 2019

**COMMENT PERIOD:**

February 1, 2019 through March 4, 2019

**PUBLIC HEARING:**

March 5, 2019

**ADOPTION:**

March 28, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 29, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

November 1, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules add a new override which would allow assessors to lower an intervention category when the client does not meet the ASAM level of care recommended by the ADSAC assessment. Revisions also revise application requirements as well as raise the threshold that must meet in order to obtain certification from 51% to 75% on scored clinical standards.

**CONTACT PERSON:**

Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:**

**450:22-1-10. Participant evaluation**

(a) The assessment and evaluation of the participant shall be as comprehensive as possible. ADSAC assessors shall not conduct any portion of the assessment process or provide any evaluation services on more than one participant at a time. The assessment shall include, but not be limited to:

- (1) A formal face-to-face biopsychsocial assessment (see OAC 450:22-1-11.7 for requirements).
- (2) The assessor shall obtain and document the participants driving history information from public record(s), when made available. This information shall, at a minimum, include the following:
  - (A) Arrest date;
  - (B) All charges relating to alcohol and drug offenses; and

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- (C) Driving record.
  - (3) Alcohol and other drug information as supplied by the participant or referring party:
    - (A) Blood alcohol concentration at time of arrest;
    - (B) Prior alcohol/drug treatment;
    - (C) Polydrug use;
    - (D) Prior alcohol-related arrest(s); and
    - (E) Prior drug related arrest(s).
  - (4) Pursuant to 450:22-1-11, the use of completed and scored standardized evaluation instruments; and
  - (5) All information shall be in a format prescribed by the Commissioner of ODMHSAS or designee.
- (b) Recommendations, known as Intervention Categories, shall be based on scores derived from and verified by, a battery of required and appropriate assessment/evaluation instruments, and adhered to by all assessors unless otherwise indicated by ODMHSAS:
- (1) All those identified as being at low risk to recidivate as indicated by scores derived from the assessment process shall be referred to educational interventions only:
    - (A) Intervention Category One shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and recommendations shall consist of:
      - (i) ten (10) hour ADSAC course, and
      - (ii) Victims Impact Panel.
      - (iii) the ten (10) hour ADSAC course and Victims Impact Panel may be attended concurrently.
    - (B) Intervention Category Two shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and a previous alcohol or drug related offense resulting in license revocation pursuant to Title 47, § 6-212.2, A and recommendations shall consist of:
      - (i) twenty-four (24) hour ADSAC course, and
      - (ii) Victims Impact Panel.
      - (iii) the twenty-four (24) hour ADSAC course and the Victims Impact Panel may be attended concurrently.
  - (2) All those identified as being at moderate risk to recidivate shall be referred to a combination of educational and clinical interventions:
    - (A) Intervention Category Three, shall be identified by alcohol or drug scale scores from the DRI I or DQ of forty (40) to sixty nine (69) and recommendations shall consist of:
      - (i) twenty-four (24) hour ADSAC course, and
      - (ii) Victims Impact Panel, and
      - (iii) substance abuse related group involvement for six (6) weeks, meeting one (1) time per week.
      - (iv) The twenty-four (24) hour ADSAC should be attended prior to the initiation of the six (6) week substance abuse group;
    - (B) Those with scoring appropriate for an Intervention Category Four or Five and placed at this level due to clinical override shall be required to attend:
      - (i) twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week, and
      - (ii) twelve (12) weeks of mutual support group attendance, once per week, and
      - (iii) It must be possible to complete the combination of interventions within ninety (90) days.
  - (3) All those identified as being at problem risk to recidivate shall be referred to clinical interventions only:
    - (A) Intervention Category Four shall be identified by alcohol or drug scale scores from the DRI II or DQ of seventy (70) to eighty nine (89) and recommendations shall consist of:
      - (i) intensive outpatient treatment, and
      - (ii) aftercare, and
      - (iii) twelve (12) weeks of mutual support meetings.
      - (iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.
      - (v) The combination of interventions recommended must be able to be completed within ninety (90) days.
  - (4) All those identified as being at severe risk to recidivate shall be referred to clinical interventions only:
    - (A) Intervention Category Five will be identified by alcohol or drug scale scores from the DRI II/DQ of ninety (90) to one hundred (100) and recommendations shall consist of:
      - (i) residential or inpatient treatment, and
      - (ii) aftercare, and
      - (iii) mutual support meetings.
      - (iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.
      - (v) The combination of interventions recommended must be able to be completed within ninety (90) days.
  - (5) If no groups are available or if the participant has a significant, appropriately diagnosed co-occurring disorder, then individual counseling can be substituted for group counseling. This must be addressed with an override and cleared through ODMHSAS.
  - (6) Interventions completed prior to the assessment may be accepted if:
    - (A) the intervention is completed after the offense resulting in license revocation, and
    - (B) the intervention meets or exceeds all the requirements listed in the recommendation, and
    - (C) the provider of the intervention is appropriately accredited.
  - (7) Assessments will remain valid for six (6) months from the date of completion:
    - (A) If after six (6) months, action toward completing assessment recommendations has not been initiated, then the assessment shall be considered invalid and a new assessment will be required, and

- (B) The participant must be notified of this fact in writing upon assessment.
- (8) A recommendation can be lowered one intervention category through the appropriate use of one of the available overrides. However, an intervention level for clinical services only or combination of educational and clinical services cannot be lowered to an intervention level for educational services only. ODMHSAS approval must be granted for overrides of more than one intervention category.
- (9) Any significant discrepancy between the scores obtained on either the DRI II or the DQ and an appropriately chosen additional supportive instrument should be cause for reevaluation of participant's answers to the assessment instruments. If the discrepancy cannot be resolved, then an override should be considered.
- (10) Any recommendation can be lowered with the appropriate use of one of the following overrides:
  - (A) "geographic accessibility",
  - (B) "on waiting list for appropriate level of care",
  - (C) "language barriers", ~~or~~
  - (D) "sustained abstinence", ~~or~~
  - (E) "ASAM override".
- (11) In each instance, the most appropriate and applicable override category shall be used.
- (12) All overrides must be supported in writing and with information or evidence that clearly justifies the decision made. Verifying and/or validating documentation must be included in the record.
- (13) "Geographic accessibility" should be used when one or more of the services required for a specific intervention category does not exist within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
  - (A) The recommendation should be reduced to the first intervention category with all services available, and
  - (B) Before using this override, the participant's address shall be verified;
- (14) "On waiting list for appropriate level of care" should be used when one or more of the services required for a specific intervention category is not available within seventy (70) miles from the town the participant identifies as a home town as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
  - (A) The service recommended must also not be available within thirty (30) days of the initial date of assessment,
  - (B) The recommendation should be reduced to the first intervention category with all services available, and
  - (C) Before using this override, the participant's address shall be verified.
- (15) "Language barriers" should be used when one or more of the services required for a specific intervention category is not offered in the language of a non-English

speaking participant within seventy (70) miles from the town the participant identifies as the home town:

- (A) The recommendation should be altered to include the most appropriate combination of interventions available in the participant's language,
  - (B) Due to problems with service availability caused by language barriers, this is the only override in which interventions from multiple categories can be commingled, and
  - (C) Before using this override, the participant's address shall be verified.
- (16) "Sustained abstinence" should be used when an override may be appropriate when recognizing that a significant period of verifiable abstinence or recovery exists between the time of the offense and the assessment:
  - (A) The abstinence/recovery must be at least six (6) months' duration,
  - (B) The abstinence/recovery must be continuous,
  - (C) The abstinence/recovery must be verifiable,
  - (D) Three notarized statements from individuals who know, but are not related to, the participant, and
  - (E) The notarized statement verifying abstinence/recovery will be in a form prescribed by the commissioner of ODMHSAS or designee.
- (17) "ASAM override" should be used when the participant has been assessed by a receiving provider as not meeting the ASAM level of care recommended by the ADSAC assessment. This override must be substantiated by including the receiving provider's ASAM in the participant's ADSAC file.

**450:22-1-11. Standardized evaluation instruments**

- (a) Standardized evaluation instruments shall be administered in the manner intended and findings shall be a component of the overall assessment and recommendations.
- (b) The approved standardized evaluation instruments shall be limited to:
  - (1) For all alcohol and drug related driving offenses resulting in license revocation, a completed and scored, current computerized version of the Driver Risk Inventory-II (DRI-II) in a face-to-face structured interview. For all non-driving alcohol and drug related convictions resulting in license revocation, a completed and scored, current computerized version of the Defendant Questionnaire (DQ) shall be used and;
  - (2) A completed biopsychsocial;
  - (3) A completed and scored additional, supportive clinical instrument to support initial findings shall be chosen by the assessor from the menu of approved supportive instruments listed below:
    - (A) Needs Assessment (NEEDS); or
    - (B) Triage Assessment for Addictive Disorders (TAAD); and
  - (4) A thorough face-to-face interview.
  - (5) All additional, supportive clinical assessment instruments shall be used only in a manner consistent with the instrument design, intended purpose and to support the identified level of severity of the participant;

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(6) All assessment instruments approved for use in the ADSAC process shall be used according to directions from the manual of each instrument; and

(7) Assessment instruments appropriate for use with those with a primary language other than English shall be identified as the instruments are approved for use by ODMHSAS.

### 450:22-1-11.4. Participant record storage, retention and disposition

(a) Each assessment agency and ADSAC assessor shall:

(1) Limit access to participant records to persons on a need to know basis;

(2) Require participant records be stored under lock and key; and

(3) With regard to closed participant records, require:

(A) Confidential storage under lock and key;

(B) Record disposition and destruction under confidential conditions; and

(C) Maintain written assessment documentation to be available for participants for a minimum of ~~five~~ ~~(5)~~ six (6) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) notes; and

(iii) referrals and recommendations made as a result of the assessment; and

(iv) verification of each requirement of the recommended intervention level prior to affixing the red stamp.

(b) EXCEPTION: With regard to 450:18-7-4(a) (3) (B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

### 450:22-1-12. Assessor applicants

(a) An applicant for certification as an assessor shall submit proof of the following:

(1) Proof of current licensure as an LBHP or certification as an alcohol and drug counselor acting within scope of licensure/certification or proof of current status as a Licensure Candidate under the onsite supervision of a certified ADSAC assessor; and

(2) Proof of having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and

(3) Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application; and

(4) A recognizable, current, color photographic image of the applicant no smaller than two (2) inch by two (2) inch;

(5) A current OSBI background check or a similar background check from another state of residence for the past five (5) years; and

(6) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and

(7) Fees.

(b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.

(c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

(1) Observe one (1) assessment with written permission of the participant prior to completing new assessor training;

(2) Complete the ODMHSAS new assessor training; and

(3) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:

(A) the exam shall require the applicant to correctly identify the major aspects of the Driver Risk Inventory-revised (DRI-II), and the Defendant Questionnaire (DQ);

(B) the exam shall require the applicant to correctly identify the major components of motivational interviewing; and

(C) the exam shall require the applicant to correctly identify rules from this chapter.

(4) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; and

(A) Submit a copy of one written court report completed by the applicant on each assessment;

(B) The observing assessor shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the ODMHSAS Commissioner or designee.

(d) ODMHSAS may require explanation of negative references prior to issuance of certification.

(e) Faxes will not be accepted as part of a permanent record.

(f) Applications are good for one (1) year from ~~acceptance approval~~. All requirements must be completed within the initial ~~nine (9)~~ twelve (12) month period or a new application must be submitted.

(g) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.

(h) An assessor applying for renewal shall submit the following for ODMHSAS review:

(1) Complete ODMHSAS renewal application form;

(2) Submit documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming from

area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C):

- (A) the application and use of the following:
  - (i) ASAM;
  - (ii) DRI;
  - (iii) DQ;
  - (iv) NEEDS; and
  - (v) TAAD;
- (B) evidence based interview techniques,
- (C) general substance abuse, and
- (D) if a mandatory training is required by ODMHSAS the hours may come from area (c) above.
- (E) training hours shall not include ADSAC course facilitation; and

(3) A new recognizable, current, photographic image of the applicant every six years no smaller than two (2) inch by two (2) inch, with any qualifying recertifications-occurring on or after July 1, 2008;

(4) Provide ODMHSAS a new OSBI background check for the applicant every six years, with any qualifying recertifications occurring on or after July 1, 2008;

(5) The fifty dollar (\$50) application renewal fee for certification and

(6) Any unpaid fees required by 450:22-1-15(7)(A). Renewal applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.

(i) In addition to submitting an application and fulfilling the renewal standards for certification per 22-1-12(h) and 22-1-15(c)(14), a review of consumer and agency documentation shall be performed. A score of at least 75% on clinical standards must be achieved in order to move forward with certification. The process will follow that of agency certifications found in Title 450:1-9-7.2. All deficiencies must be resolved in order for certification to be renewed.

(j) Certification shall be valid for thirty six (36) months.

(k) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.

(1) A person whose certification has expired for less than twelve (12) months must make application for an initial certification as set forth in 450:22-1-12 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has expired for twelve (12) months or more must make application for an initial certification as set forth in 450:22-1-12.

(l) Each assessor shall notify ODMHSAS of any change of application information related to his or her licensure status, email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

(m) All renewals of certification are due on the third anniversary of certification.

**450:22-1-15. Assessor responsibilities**

(a) ADSAC assessments shall be provided by individuals certified by ODMHSAS to provide such assessments.

(b) All fees due ODMHSAS shall be remitted within thirty (30) days. Any fees identified as being delinquent shall be paid within thirty (30) days of discovery of the omission.

(c) Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of completing an assessment if the court is anticipating such a report;

(3) Provide information in writing regarding state and local area education and treatment resources specific to the area in which the participant resides, to each individual assessed appropriate to the referral recommendations and, in a format prescribed by the Commissioner of ODMHSAS or designee;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all 45 C.F.R. Parts 160 & 164 (HIPAA) regulations and inform all participants that all contacts, evaluation results and reports are protected through federal confidentiality regulations under 42 CFR, Part 2;

(5) Assure there is no conflict of interest by:

(A) referring participants to only those services in which the assessor has no vested interest;

(B) providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) maintaining written assessment documentation ~~to be available for consumers for a minimum of five (5) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:~~

~~(i) completed assessment instrument(s) and associated raw data;~~

~~(ii) clinical interview notes; and~~

~~(iii) referrals and recommendations made as a result of the assessment.~~

~~(iv) verification of each requirement of the recommended intervention level prior to affixing the red stamp pursuant to 22-1-11.4(a)(3)(C).~~

(6) Provide liaison with court officials and related other agencies;

(7) The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest on or after November 1, 2008 is one hundred sixty dollars (\$160.00). The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 is one hundred seventy five dollars (\$175.00);

(A) Remit 10% of each fee collected for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 to the State Treasurer to be credited to the Department of

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- Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days. No such 10% fee shall be remitted for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest on or after November 1, 2008. Completion of assessment includes payment in full by the participant for the assessment service; and
- (B) No additional charges, extra fees or interest shall be attached to the assessment process.
- (8) Explain possible liability and ability to pay for ODMHSAS affiliated, private and other education and treatment facilities;
- (9) For those participants whose license was withdrawn due to an alcohol and drug related offense on or before June 30, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, as verified by DPS, the assessor shall:
- (A) verify the participant has completed the assessment to include payment in full;
- (B) affix the official red stamp;
- (C) provide the participant with a certificate of completion; and
- (D) report completion to the Department of Public Safety through ODMHSAS.
- (10) For those participants whose license was withdrawn due to receiving an alcohol and drug related offense on or after July 1, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, the assessor shall:
- ~~(A) provide the participant with a certificate of completion;~~
- ~~(B) affix the official, embossed assessor seal and stamp, with the stamp in red ink; and~~
- ~~(C) report completion to the Department of Public Safety through ODMHSAS;~~
- ~~(D) verify the participant has completed all recommendations identified through the assessment and required for license reinstatement prior to affixing the official, embossed assessor seal and stamp; and~~
- ~~(E) verify the participant has completed the ADSAC assessment to include payment in full.~~
- (B) verify the participant has completed all recommendations identified through the assessment and required for license reinstatement prior to affixing the official stamp;
- (C) affix the official stamp with the stamp in red ink;
- (D) provide the participant with a certificate of completion; and
- (E) report completion to the Department of Public Safety through ODMHSAS.
- (11) Those participants whose most recent offense was before September 1, 1993 should be referred to DPS to verify an assessment is not required.
- (12) Provide ODMHSAS notification of those participants successfully completing required education and treatment, including the participant's name, address, date of birth and driver's license number through the online data entry system known as ADSAC online, or in a manner prescribed by the Commissioner or designee. This notification shall be submitted to ODMHSAS within seventy-two (72) hours upon verification of successful completion of all requirements;
- (13) Certified ADSAC assessors and agencies must provide to a caller adequate information regarding the ADSAC assessment process and scheduling requirements. The phone number published specific for each assessor must be continuously available, either answered in person, answering machine, electronic voice mail, or a professional answering service. Numbers published for the purpose of ADSAC assessment and evaluation advertisement must be answered by individuals appropriately trained in all relevant aspects of 42 CFR, Part 2 and HIPAA regulations;
- (14) All assessors will complete a minimum of six (6) ADSAC assessments during each twelve (12) month period in order for assessor certification to remain active;
- (15) Each assessor and program shall maintain an inventory of required and approved instruments sufficient to meet ODMHSAS requirements;
- (16) Provide each individual assessed with information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, the name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for ODMHSAS, ADSAC personnel at ODMHSAS shall be included. All information shall be in a form prescribed by the Commissioner of ODMHSAS or designee;
- (17) Each certified assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least 15 days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to 30 days after a change has occurred;
- (18) For participants who have a language other than English:
- (A) The participant shall be referred to an ADSAC assessor fluent in that language, if such as assessor is available. If no assessor fluent in the language is available, then an interpreter shall be present for the entire assessment process; and
- (B) If an interpreter is required, the interpreter shall not be younger than eighteen (18) years of age and should not be related to the participant.
- (19) Provide assessment services only at sites approved by ODMHSAS;
- (20) Report all data to ODMHSAS within thirty (30) days or as otherwise directed in this Chapter;
- (21) Make recommendations based on ODMHSAS required assessment instruments;
- (22) Make all recommendations based on current accepted placement criteria; and

(23) Preference in clinical referrals shall be given to institutions and organizations possessing a substance abuse certification from ODMHSAS, if such service is available.

**450:22-1-20. Inactive status and closure**

- (a) An active ADSAC assessor certification may be placed on inactive status by written request:
  - (1) An inactive certification forfeits all rights and privileges granted by the certification;
  - (2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS along with the official stamp;
  - (3) When certification is placed on inactive status, it shall remain inactive for at least twelve (12) months from the date of inactivation, or until the end of the certification period, whichever is first;
  - (4) Active status may be re-established upon written request;
  - (5) When an ADSAC assessor must cease operation for less than twelve (12) months all ADSAC assessment records must be secured as defined in 450:22-1-8;
  - (6) During such a temporary closure ADSAC assessment records shall remain accessible as defined in 450:22-1-22;
  - (7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC assessment process, in the event all recommendations are completed during the temporary closure; and
  - (8) ODMHSAS shall be notified in writing within thirty (30) days of any temporary closure of any office providing ADSAC assessments. The written notification shall contain:
    - (A) The reason for closing;
    - (B) Contact information for participant assessment records; and
    - (C) A projected date for resumption of business.
- (b) An active ADSAC assessment agency certification may be placed on inactive status by written request:
  - (1) An inactive certification forfeits all rights and privileges granted by the certification;
  - (2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;
  - (3) When certification is placed on inactive status, it must remain inactive for a minimum of one (1) year and no more than (3) years from the date of inactivation, or until the end of the certification period, whichever is first;
  - (4) Active status may be re-established upon request;
  - (5) When an assessment agency must cease operation for less than twelve (12) months, all participant records must be secured as defined in 450:22-1-22 and 450:22-1-25;
  - (6) During such a temporary closure, participant records shall remain accessible as defined in 450:22-1-22;
  - (7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC

assessment process, in the event all recommendations are completed during the temporary closure; and

(8) ODMHSAS shall be notified in writing of any permanent closure of any assessment agency providing ADSAC assessments. The written notification shall contain:

- (A) The reason for closing; and
- (B) Contact information for participant assessment records.

*[OAR Docket #19-552; filed 6-5-19]*

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 27. STANDARDS AND CRITERIA FOR MENTAL ILLNESS SERVICE PROGRAMS**

*[OAR Docket #19-553]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Organization Structure and Administrative Operations
- Part 5. Safety and Risk Management
- 450:27-3-41. Health and Safety; facility environment [AMENDED]
- 450:27-3-44. Hygiene and sanitation [NEW]
- Subchapter 7. Clinical Services
- Part 1. Required Services
- 450:27-7-7. Emergency services [AMENDED]
- Part 5. Clinical Documentation
- 450:27-7-41. Clinical record content, screening, intake and assessment, documentation [AMENDED]
- 450:27-7-42. Behavioral health service plan; documentation [AMENDED]
- 450:27-7-44. Progress notes [AMENDED]

**AUTHORITY:**

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-323A.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

March 29, 2019

**COMMENT PERIOD:**

February 1, 2019 through March 4, 2018

**PUBLIC HEARING:**

March 5, 2019

**ADOPTION:**

March 28, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 29, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

November 1, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules are intended to clarify requirements for the health and safety of the facility environment as well as clarify requirements for required emergency services. Specifically, standards will require that facilities have lavatories and toilet facilities on site as well as housekeeping services to ensure a hygienic environment. Additionally, proposed revisions require the use of

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ASAM criteria for clients admitted for co-occurring treatment services and clarify requirements for service plan documentation and progress notes.

**CONTACT PERSON:**

Traylor Rains-Sims, Senior Director, Policy & Provider Regulation, Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen Blvd, Suite E600, Oklahoma City, Oklahoma 73106, (405) 248-9345.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:**

## SUBCHAPTER 3. ORGANIZATION STRUCTURE AND ADMINISTRATIVE OPERATIONS

### PART 5. SAFETY AND RISK MANAGEMENT

**450:27-3-41. Health and Safety; facility environment**

- (a) The facility shall obtain an annual fire and safety inspection from the State Fire Marshall or local authorities which documents approval for occupancy and use at each site where services are provided.
- (b) The facility shall appoint a safety officer.
- (c) Facility grounds shall be maintained in a manner to provide a safe environment for consumers, personnel, and visitors.
- (d) First aid supplies and firefighting equipment shall be maintained in appropriately designated areas within the facility
- (e) The staff shall know the exact location of and how to use first aid supply kits and firefighting equipment.
- (f) The facility shall post written plans and diagrams noting emergency evacuation routes in case of fire, and shelter locations in case of severe weather, at each site where services are provided.
- (g) There shall be an emergency power system to provide lighting throughout each location where consumers receive services.
- (h) Compliance with 450:27-3-41 shall be determined by visual observation; posted evacuation plans; a review of the provider's annual fire and safety inspection report; and a review of policy, procedures and other supporting documentation provided.

**450:27-3-44. Hygiene and sanitation**

Facilities shall provide:

- (1) Lavatories and toilet facilities on site in a minimum ratio of (1) per twenty (20) persons;
- (2) Water obtained from an approved public water supply or tested at least quarterly and treated as necessary, thereby maintaining a determination as an approved water supply by the authority having jurisdiction and the OSDH or DEQ, as necessary;
- (3) Housekeeping services so that a hygienic environment is maintained in the facility.

## SUBCHAPTER 7. CLINICAL SERVICES

### PART 1. REQUIRED SERVICES

**450:27-7-7. Emergency services**

The facility shall provide accessible co-occurring disorder capable response services for psychiatric and/or substance abuse emergencies. Facility policies and procedures shall include no arbitrary barriers to access emergency services based on active substance use or designated substance levels.

- (1) Assessment and response to psychiatric and/or substance abuse emergencies shall be available and provided directly by qualified facility staff between the hours of 8:00am to 5:00pm, Monday through Friday or during the facility's hours of operations, whichever is greater.
- (2) Methods by which consumers and others can access emergency services ~~accessed beyond~~outside of the facility's scheduled hours/days of operation shall be posted and visible to the public. This does not include messages solely instructing clients to dial 9-1-1.
- (3) Best practice diversion and crisis intervention procedures should be utilized and stipulated in facility treatment protocols.
- (4) The facility shall also provide arrangements for emergency services beyond the facility's scheduled hours/days of operation for consumers admitted to their program. This does not include solely instructing clients to dial 9-1-1.
- (5) This service shall also include availability of 24-hour referral to higher levels of care than those offered by the facility, including but not limited to inpatient treatment. This does not include solely instructing clients to dial 9-1-1.
- (6) Referral services for additional emergency services shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A O.S. §§ 5-201 through 5-407).
- (7) Compliance with 450:27-7-7 shall be determined by a review of policy and procedures, referral agreements, emergency contract records, staff schedules, and clinical records.

### PART 5. CLINICAL DOCUMENTATION

**450:27-7-41. Clinical record content, screening, intake and assessment, documentation**

- (a) The facility shall complete a face-to face screening with each individual to determine appropriateness of admission in accordance with 450:27-7-2. Screening services.
- (b) The facility shall document the face-to-face screening conducted how the consumer was assisted to identify goals, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.

(c) Each consumer admitted for treatment for co-occurring services shall be assessed by a qualified professional demonstrating competency in the use of ASAM criteria, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care, to determine a clinically appropriate placement in the least restrictive level of care. Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed co-occurring treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Upon determination of appropriate admission, consumer demographic information shall be collected, as defined by facility policies and procedures.

(de) For persons admitted to service, the facility shall complete a psychological-social assessment which gathers sufficient information to assist the consumer develop an individualized service plan.

(ef) An intake assessment update, to include date, identifying information, source of information, present needs, present life situation, current level of functioning, and what consumer wants in terms of service, is acceptable as meeting requirements of 450:27-7-41 only on re-admissions within one (1) year of previous admission at the facility.

(fg) Compliance with 450:450:27-7-41 shall be determined by a review of the following: psychological-social assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

**450:27-7-42. Behavioral health service plan; documentation**

(a) The service plan is developed and finalized with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.

(b) The service plan shall completed by a LBHP or licensure candidate and be based on information obtained in the mental health assessment, other information provided on behalf of the consumer, and includes the evaluation of the assessment information by the clinician and the consumer.

(c) For adults, the service plan must be focused on recovery. For children the plan should address school and education concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Service plans must be completed within six (6) treatment sessions and ~~adhere to the format and content requirements described in the facility policy and procedures; include:~~

- (1) Consumer strengths, needs, abilities, and preferences;

(2) Identified presenting challenges, needs, and diagnosis;

(3) Goals for treatment with specific, measurable, attainable, realistic, and time-limited objectives;

(4) Type and frequency of services to be provided;

(5) Description of consumer's involvement in, and response to, the service plan;

(6) The service provider who will be rendering the services identified in the service plan; and

(7) Discharge criteria that are individualized for each consumer.

(e) Service plan updates should occur at a minimum of every 6 months during which services are provided and ~~adhere to the format and content requirements described in the facility policy and procedures; include the following:~~

(1) Progress on previous service plan goals and/or objectives;

(2) A statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(3) Change in goals and/or objectives based upon consumer's progress or identification of new needs and challenges;

(4) Change in frequency and/or type of services provided;

(5) Change in staff who will be responsible for providing services on the plan; and

(6) Change in discharge criteria.

(f) Service plans, both comprehensive and update, must include dated signatures for the consumer (if over age 14), the parent/guardian (if under age 18 or otherwise applicable), and the primary service practitioner. Signatures must be obtained after the service plan is completed.

(g) Compliance with 450:27-7-42 shall be determined by a review of the clinical records, policies and procedures, and interviews with staff and consumers, and other agency documentation.

**450:27-7-44. Progress notes**

(a) Progress notes shall chronologically describe the services provided, the consumer's response to the services provided, and the consumer's progress in treatment and ~~adhere to the format and content requirements described in the facility policy and procedures; include the following:~~

(1) Date;

(2) Name of consumer(s) to whom services were rendered;

(3) Start and stop time for each timed treatment session or service;

(4) Original signature of the therapist/service provider; in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or photocopied signatures are allowed. Electronic signatures are acceptable;

(5) Credentials of therapist/service provider;

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- (6) Specific service plan need(s), goals and/or objectives addressed;
  - (7) Services provided to address need(s), goals and/or objectives;
  - (8) Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;
  - (9) Consumer (and family, when applicable) response to the session or intervention;
  - (10) Any new need(s), goals and/or objectives identified during the session or service.
- (b) Progress notes shall be documented according to the following time frames:
- (1) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments;
  - (2) Behavioral health rehabilitation services and day treatment programs for children and adolescents staff must maintain a daily, member sign-in/sign-out record of member attendance, and shall write a progress note daily or a summary progress note weekly.
- (c) Compliance with 450:27-7-44 shall be determined by a review of clinical records and policies and procedures.

[OAR Docket #19-553; filed 6-5-19]

## TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

### CHAPTER 53. STANDARDS AND CRITERIA FOR CERTIFIED PEER RECOVERY SUPPORT SPECIALISTS

[OAR Docket #19-554]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 450:53-1-2. Definitions [AMENDED]
- Subchapter 3. Peer Recovery Support Specialists Certification Application
- 450:53-3-1. Qualifications for certification [AMENDED]
- 450:53-3-2. Applications for certification [AMENDED]
- Subchapter 5. Peer Recovery Support Specialists Certification, Training, Exam and CEU'S
- 450:53-5-1. Peer Recovery Support Specialists minimum education requirements [AMENDED]
- 450:53-5-2. Peer Recovery Support Specialists certification examination [AMENDED]
- 450:53-5-3. Continuing education requirements [AMENDED]
- Subchapter 7. Rules of Professional Conduct
- 450:53-7-2. Competence and scope of practice [AMENDED]
- 450:53-7-3. Proficiency [AMENDED]
- 450:53-7-4. Wellbeing of the people served [AMENDED]
- 450:53-7-5. Professional standards [AMENDED]
- 450:53-7-9. C-PRSS Supervision [NEW]

**AUTHORITY:**  
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-326.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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**GIST/ANALYSIS:**

The proposed rules are intended to update definitions and qualifications for certification as a peer recovery support specialist as well as update continuing education requirements to maintain certification. Proposed revisions also require that all C-PRSS be supervised by individuals who have successfully completed ODMHSAS approved Supervising PRSS Training.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:**

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 450:53-1-2. Definitions

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

**"Board"** means the State Board of Mental Health and Substance Abuse Services.

**"Certified Peer Recovery Support Specialists, ~~C-RSS~~ or C-PRSS"** means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health services as provided in this Chapter.

**"Commissioner"** means the Commissioner of Mental Health and Substance Abuse Services.

**"Employed"** means, for purposes of this chapter only, ~~a person that is either working as a paid employee or as a volunteer for the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services.~~ employed by or volunteer with the State, a behavioral health service provider or an advocacy agency contracting with the State to provide behavioral health services, or a behavioral health services provider certified by ODMHSAS, employed by a tribe or tribal facility that provides behavioral health services, or employed by an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility.

"Exam" as prescribed by the Department, is an exam individuals must pass to become certified.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts.

"Department" or "ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Dual relationship" means a familial, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a consumer, or engaging in any activity with another person that interferes or conflicts with the Certified Peer Recovery Support Specialists' professional obligation to a consumer.

"Peer Support" means using lived experience to navigate treatment, foster relationships with community resources and supports, and develop a plan for overall well-being. These services and supports are valued as a component of treatment and integrated into the continuum of care to promote individual growth and enhance social connection.

"Recovery" for purposes of this chapter only refers to a journey of healing and transformation enabling ~~a person~~ people with mental health and/or substance ~~abuse~~ diagnose ~~challenges~~ to live a meaningful life in the community of ~~his or her~~ their choice while striving to achieve ~~his or her~~ their full potential. The process of recovery leads individuals toward the highest level of autonomy of which they are capable. Key characteristics of recovery include:

- (A) Recovery is ~~self-directed~~ self-directed, personal and individualized (not defined by treatment providers or agencies);
- (B) Recovery is holistic. Recovery is a process through which one gradually achieves greater balance of mind, body and spirit in relation to other aspects of one's life that can include family, work and community;
- (C) Recovery moves beyond symptom reduction and relief (i.e. meaningful connections in the community, ~~overcoming~~ developing specific skill ~~deficits~~ sets, establishing a sense of quality and well-being);
- (D) Recovery is both a process of healing (regain-ing) and a process of discovery (moving beyond);
- (E) Recovery encompasses the possibility for individuals to ~~test~~ explore, make mistakes and try again; and
- (F) Recovery can occur within or outside the context of professionally directed treatment.

"Wellness" means an active process of becoming aware of and making choices toward a healthy and fulfilling life. Wellness is more than being free from illness, it is a dynamic process of change and growth.

**SUBCHAPTER 3. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION APPLICATION**

**450:53-3-1. Qualifications for certification**

Each applicant for certification as a Peer Recovery Support Specialists shall:

- (1) Possess a High School Diploma or General Equivalency Diploma (GED);
- (2) Have demonstrated self-driven recovery from a mental illness, substance abuse disorder or both;
- (3) Be at least 18 years of age;
- (4) Be willing to self disclose about their own recovery;
- (5) Be employed by or volunteer with the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services, or a behavioral health services provider certified by ODMHSAS.
- (6) Possess good moral character;
- (7) Be actively working on recovery and/or overall wellness;
- (8) Pass an examination based on standards promulgated by ODMHSAS pursuant to 43A O.S. § 3-326;
- (8) Not be engaged in any practice or conduct which would be grounds for denying, revoking or suspending a certification pursuant to this title; and
- (9) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-326.

**450:53-3-2. Applications for certification**

- (a) Applications for certification as a Peer Recovery Support Specialist shall be submitted to the Department on a form and in a manner prescribed by the Commissioner or designee.
- (b) An application shall include the following items:
  - (1) Application form completed in full according to its instructions;
  - (2) Application fee shall be submitted in an amount up to \$50.00;
  - (3) Documentation of current status as being employed by the state of Oklahoma, by a behavioral service provider, ~~or~~ advocacy agency contracting with the state to provide behavioral health services, or by a behavioral health services provider certified by ODMHSAS, a tribe or tribal facility that provides behavioral health services, or employed by an Oklahoma Department of Veterans Affairs or a United States Department of Veterans Affairs facility;
  - (4) The employment status verification form(s) from the employer must be sent to ODMHSAS by the employer;
  - (5) Official high school transcript or General Equivalency Diploma (GED);
  - (6) Documentation of age; and
  - (7) Detailed information, as requested on the application, demonstrating recovery from a mental illness, substance abuse disorder or both.
- (c) An applicant, who meets the requirements for certification and otherwise complied with the Chapter, shall be eligible for certification.
- (d) A complete application must be submitted at least fourteen (14) days prior to attending Peer Recovery Support Specialists training.
- (e) Applications shall be submitted and approved by the Department prior to eligibility of taking the C-PRSS training.

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(f) Applications shall only be valid for a period up to six (6) months.

### SUBCHAPTER 5. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION, TRAINING, EXAM AND CEU'S

#### 450:53-5-1. Peer Recovery Support Specialists minimum education requirements

The purpose of this section is to delineate the training requirements for the Certified Peer Recovery Support Specialists.

- (1) The Department shall have the authority and responsibility for providing Peer Recovery Support Specialists training classes a minimum of three times during the year.
- (2) Request for attending the certification training must be made to the Department fourteen (14) days prior to the beginning of scheduled classes.
- (3) In order to fulfill the certification training requirements, an applicant must attend and complete a forty (40) hour PRSS training block covering various aspects of recovery, ethics and/or boundaries, mental health and substance abuse as specified by the Department.
- (4) Applicants must attend the entire forty (40) hour training block. Absences are excused only for emergencies. An absence lasting over one day shall cause the trainee to be subject to retaking the entire forty (40) hour training block at the next scheduled training course.
- (5) Applicants are responsible for completing homework during the forty (40) hour training block.
- (6) Applicants must be able to demonstrate their ability to verbally share their recovery journey with others in a safe, concise, and trauma-informed manner.

#### 450:53-5-2. Peer Recovery Support Specialists certification examination

Examinations shall be held at such times, at such places and in such manner as the Commissioner or designee directs. The examination shall cover such technical, professional and practical subjects as relate to the practice of a Certified Peer Recovery Support Specialist.

- (1) Certification exams consist of a written exam covering all aspects of the training block.
- (2) An applicant must score at least a seventy-five percent (75%) to pass the exam and be certified. A score of seventy-four percent (74%) or less will result in an applicant being required to test again at the next scheduled test date, or at a time and manner approved by the Commissioner or designee.
- (3) Applicants who fail to complete and pass the certification exam within six (6) months of application must reapply.

#### 450:53-5-3. Continuing education requirements

(a) Certified Peer Recovery Support Specialists must complete twelve (12) hours of continuing education per year and submit documentation of attendance for the continuing education to the Department annually.

(b) The Department will use the following criteria to determine approval of acceptable CEU courses:

- (1) Provides information to enhance delivery of Peer ~~Recovery~~ Support Services and has been approved by Commissioner or designee; or
  - (2) ~~Meets the requirements for LPC, LMFT, LBP, LCSW, CADC, LADC, or CME continuing education;~~ or
  - (3) Is a required undergraduate or graduate course in a behavioral health related field and pertains to direct interaction with consumers (three (3) hours of course work is equal to twelve (12) hours of CEUs); and
  - (4) At least three (3) of the continuing education hours must be in ethics.
  - (5) Continuing education accrual from teaching continuing education or sharing recovery stories may also be accrued when the C-PRSS teaches in programs such as seminars, workshops and conferences, or shares lived experience in settings such as community events, public forums, and news articles, when the content conforms to Peer Support and is not a required part of the C-PRSS regular employment. No more than three (3) hours of continuing education may be accrued per year through teaching and sharing activities.
- (c) Certified Peer Recovery Support Specialists shall retain documents verifying attendance for all continuing education units claimed for the reporting period. Acceptable verification documents include:
- (1) An official continuing education validation form or certificate furnished by the presenter indicating number of CEUs given for the course; and/or
  - (2) A copy of the agenda showing the content and presenter for the course; and
  - (3) A signed copy of C-PRSS Attestation Form.
- (d) Failure to complete the continuing education requirements and submit the required documentation by the renewal date renders the certification in suspension, and results in the loss of all rights and privileges of a Certified Peer Recovery Support Specialists. The Certified Peer Recovery Support Specialists certification may be reinstated during a period of no longer than six (6) months following the suspension date. If not reinstated the certification shall become null and void.

### SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

#### 450:53-7-2. Competence and scope of practice

(a) Peer Recovery Support services are an EBP model of care which consists of a qualified peer recovery support provider (PRSS) who assists individuals with their recovery from behavioral health disorders, mental illness and/or substance use disorders.

(b) A C-PRSS must possess knowledge about various mental health settings and ancillary services (i.e., Social Security, housing services, and advocacy organizations). Certified Peer Recovery Support Specialist (C-PRSS) provides peer support services; serves as an advocate; provides information and peer support. The C-PRSS performs a wide range of tasks to assist consumers in regaining control of their lives and recovery processes. The C-PRSS will possess the skills to maintain a high level of professionalism and ethics in all professional interactions. Examples of a PRSS' scope of practice would include the following:

- (1) Utilizing their knowledge, skills and abilities the PRSS will:
  - (A) Teach and mentor the value of every individual's recovery experience;
  - (B) Model effective coping techniques and self-help strategies;
  - ~~(C) Prioritize self-care and role model that recovery is possible for all people.~~
  - ~~(D)~~ Assist service recipients in articulating personal goals for recovery;
  - ~~(E)~~ Assist service recipients in determining the objectives needed to reach his/her recovery goals;
- (2) Utilizing ongoing training the PRSS may:
  - (A) Proactively engage consumers ~~and — possess~~ using communication skills ~~— ability to transfer~~ introducing new concepts, ideas, and insight to others;
  - (B) Facilitate peer support groups;
  - (C) Assist in setting up and sustaining self-help (mutual support) groups;
  - (D) Support consumers in using a wellness plan;
  - (E) Assist in creating a crisis plan/ Psychiatric Advanced Directive as instructed in the PRSS Training;
  - (F) Utilize and teach problem solving techniques with consumers.
  - (G) Teach consumers how to identify and combat negative self-talk and fears;
  - (H) Support the vocational choices of consumers and assist him/her in overcoming job-related anxiety;
  - (I) Assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;
  - (J) Assist other staff in identifying program and service environments that are conducive to recovery;
  - (K) Attend treatment team and program development meetings to ensure the presence of the consumer voice and to promote the use of self-directed recovery tools.
- (3) Possess knowledge about various behavioral health settings and ancillary services (i.e. Social Security, housing services, advocacy organizations);
- (4) Maintain a working knowledge of current trends and developments in the behavioral health field;
  - (A) Attend continuing education assemblies when offered by/approved by the ~~Office of Wellness and Advocacy~~ Commissioner or designee;

- (B) Develop and share recovery-oriented material with other PRSS's at ~~consumer-specific~~ peer-specific continuing education trainings.
- (5) Serve as a PRSS by:
  - (A) Providing and advocating for effective recovery oriented services;
  - (B) Assist consumers in obtaining services that suit that individual's recovery needs;
  - (C) Inform consumers about community and natural supports and how to utilize these in the recovery process; and
  - (D) Assist consumers in developing empowerment skills through self-advocacy.

**450:53-7-3. Proficiency**

- (a) Peer Support: C-PRSS shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state credentials, and appropriate professional and personal experience.
- (b) Specialty: C-PRSS shall not represent themselves as specialists in any aspect unless so designated.
- (c) Impairment: C-PRSS shall not offer or render professional services when such services may be impaired by a personal physical, mental or emotional condition(s). C-PRSS should seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If any C-PRSS possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits ~~his or her~~ their ability to provide peer recovery support services in that event the ~~C-PRSS~~ they shall not undertake to provide services and will terminate the relationship in accordance with these rules.

**450:53-7-4. Wellbeing of the people served**

- (a) **Discrimination.** C-PRSS shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, sexual orientation, gender, religion, diagnosis, behavioral health condition or national origin.
- (b) **Confidentiality.** C-PRSS shall maintain the confidentiality of any information received from any person or source about a ~~client~~ consumer, unless authorized in writing by the ~~client~~ consumer or otherwise authorized or required by law or court order. C-PRSS shall be responsible for complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.
- (c) **Dual relationships.** C-PRSS shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the C-PRSS reasonably suspects that he or she has inadvertently entered into a dual relationship the C-PRSS shall record that fact in the records of the affected person(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the C-PRSS cannot readily refer the person

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to another C-PRSS, the C-PRSS shall complete the following measures as necessary to prevent the exploitation of the person and/or the impairment of the C-PRSS's professional judgment:

- (1) Consult with the C-PRSS supervisor to understand the potential impairment to the C-PRSS's professional judgment and the risk of harm to the person of continuing the dual relationship.
  - (2) Fully disclose the circumstances of the dual relationship to the consumer and secure the consumer's written consent to continue providing services.
- (d) **Providing services to persons of prior association.** C-PRSS' shall not undertake to provide services to any person with whom the C-PRSS' has had any prior sexual contact or close personal relationship.
- (e) **Interaction with former people with whom a C-PRSS has provided services.** C-PRSS shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former recipient of service. C-PRSS shall not engage in any activity that is or may be sexual in nature with a former recipient of service after the termination of the professional relationship. C-PRSS shall not exploit or obtain an advantage over a former recipient of services by the use of information or trust gained during the peer recovery support professional relationship.
- (f) **Invasion of privacy.** C-PRSS shall not make inquiry into persons or matters that are not reasonably calculated to assist or benefit the peer recovery support process.
- (g) **Referral.**

(1) If C-PRSS determine that they are unable to be of professional assistance to a client, the C-PRSS shall not enter a professional relationship. C-PRSS shall refer people to appropriate sources when indicated. If the person declines the suggested referral, the C-PRSS shall terminate the relationship.

(2) C-PRSS shall not abandon or neglect current recipients of service in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an C-PRSS becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the C-PRSS's duty of responsibility to the current client, including a suspension of the C-PRSS's certification or any other situation or condition described in these rules, the C-PRSS shall promptly notify the recipient of service and the facility in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the relationship.

### **450:53-7-5. Professional standards**

- (a) It shall be the responsibility of Certified Peer Recovery Support Specialists (C-PRSS), in their commitment to peer support, to value self-determination, and in providing peer services, and to strive to maintain the highest standards of their profession.
- (b) C-PRSS shall accept responsibility for the consequences of their work and make every effort to ensure that their services are used appropriately.
- (c) It shall be unprofessional conduct for a C-PRSS to violate a state or federal statute, if the violation directly relates to

the duties and responsibilities of the C-PRSS or if the violation involves moral turpitude.

(d) C-PRSS shall not render peer recovery support services while under the influence of alcohol or illegal drugs or misused substances or disruptive symptoms.

### **450:53-7-9. C-PRSS Supervision**

All C-PRSS shall report to a supervisor that has successfully completed an ODMHSAS approved Supervising PRSS Training.

*[OAR Docket #19-554; filed 6-5-19]*

## **TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOID TREATMENT PROGRAMS**

*[OAR Docket #19-555]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions

450:70-1-2. Definitions [AMENDED]

450:70-1-4. Applicability [AMENDED]

Subchapter 2. Facility Infrastructure Requirements

450:70-2-3. Tobacco-free campus [AMENDED]

Subchapter 3. Facility Record System

Part 3. Intake and Admission Assessment

450:70-3-5.9. Assessment and record content - Supportive service array [AMENDED]

Part 5. Biopsychosocial Assessment

450:70-3-7. Biopsychosocial assessment [AMENDED]

Part 7. Service Planning

450:70-3-8. Individualized service planning [AMENDED]

Subchapter 4. Services Support and Enhancement

Part 1. Staff Support

450:70-4-2. Clinical supervision [AMENDED]

450:70-4-4.3. Staffing - Training [AMENDED]

Part 3. Organizational and Facility Management

450:70-4-7. Operations - Hours [AMENDED]

450:70-4-7.4. Operations - Emergencies and exception for weekend dosing [AMENDED]

Subchapter 6. Substance Use Disorder Treatment Services

Part 2. Levels of Treatment Services

450:70-6-5. Withdrawal Management [AMENDED]

450:70-6-6. Administrative withdrawal [AMENDED]

450:70-6-7. Short term managed withdrawal [AMENDED]

450:70-6-9. Interim maintenance treatment services [AMENDED]

450:70-6-11. Programs using opioid antagonist or long acting opioid agonist [AMENDED]

Part 3. Phases of Treatment Services

450:70-6-15.3. Service- Clinical services [AMENDED]

450:70-6-17.3. Service phases - Phase I [AMENDED]

450:70-6-17.4. Service phases - Phase II [AMENDED]

450:70-6-17.5. Service phases - Phase III [AMENDED]

450:70-6-17.6. Service phases - Phase IV [AMENDED]

450:70-6-17.7. Service phases - Phase V [AMENDED]

450:70-6-17.8. Service phases - Phase VI [AMENDED]

### **AUTHORITY:**

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-601 through 3-603.

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

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n/a

**GIST/ANALYSIS:**

The proposed rules are intended to update terminology from "counseling" to "psychotherapy or therapy". Rules further clarify that "psychotherapy or therapy" must be provided by Licensed Behavioral Health Professionals (LBHP) or Licensure Candidates. Rules also allow for behavioral rehabilitation services to be provided in lieu of therapy in order to meet active treatment requirements. Rehabilitation services may be provided by a LBHP, Licensure Candidate, Certified Alcohol and Drug Counselor or Behavioral Health Case Manager II.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2019:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**450:70-1-2. Definitions**

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

**"Accreditation"** means the process of review and acceptance by a nationally recognized accreditation body.

**"Accreditation body"** means a body that has been approved by SAMHSA to accredit opioid treatment programs using opioid agonist or partial agonist treatment medications.

**"Administer"** The direct application of a prescription drug by ingestion or any other means to the body of a patient by a licensed practitioner, or the patient at the direction of, or in the presence of, a practitioner.

**"Administrative withdrawal"** means a patient's medically supervised withdrawal involving the gradual tapering of dose of medication over time, coinciding with the patient's usually involuntary discharge from medication assisted treatment. Administrative withdrawal typically results from non-payment of fees, violent or disruptive behavior, incarceration or other confinement.

**"Approved narcotic drug"** means a drug approved by the United States Food and Drug Administration for maintenance and/or detoxification of a person physiologically dependent upon opioid drugs.

**"American Society of Addiction Medicine Patient Placement Criteria" or "ASAM PPC"** means the most recent clinical guide published by the American Society of Addiction Medicine to be used in matching patients to appropriate levels of care.

**"Biopsychosocial assessment"** means in-person interviews conducted by a LBHP or Licensure Candidate designed to elicit historical and current information regarding the behavior and experiences of a patient, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance abuse-related treatment and service planning.

**"Buprenorphine"** means a partial agonist, Schedule III narcotic approved for use in opioid dependence treatment.

**"CARF"** means the Commission on the Accreditation of Rehabilitation Facilities.

**"Central registry"** A document or database to which an OTP shall report patient identifying information about individuals who are applying for or undergoing medically supervised withdrawal or maintenance treatment on an approved opioid agonist or partial agonist to a central record system approved by the Commissioner or designee.

**"Certification"** means the process by which ODMHSAS or SAMHSA determine that an OTP is qualified to provide opioid treatment under applicable State and Federal standards.

**"Chain of custody"** means the process of protecting items so that movement, possession and location are secure and documented and there is no possibility for altering or otherwise tampering with the item.

**"Chronic pain disorder"** means an ongoing condition or disorder consisting of chronic anxiety, depression, anger and changed lifestyle, all with a variable but significant level of genuine neurologically based pain. The pain becomes the main focus of the patient's attention, and results in significant distress and dysfunction.

**"Clinical Opioid Withdrawal Scale" or "COWS"** means a well validated, standardized assessment instrument for evaluating the severity of a patient's withdrawal through the identification of objective and subjective symptoms and the severity of these symptoms.

**"Clinical supervision"** means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance.

**"COA"** means the Commission on Accreditation.

**"Comprehensive maintenance treatment"** is:

(A) Dispensing or administering an approved opioid agonist or partial agonist medication at stable dosage levels for a period in excess of 21 days to a patient for opioid dependence, and

(B) Providing medical, clinical and educational services to the patient with opioid dependence.

**"Continuing care plan"** means a written plan of recommendations and specific referrals for implementation of

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continuing care services, including medications, shall be prepared for each patient meeting the ASAM Patient Placement Criteria dimensional continued service criteria. Continuing care plans shall be developed with the knowledge and cooperation of the patient. This continuing care plan may be included in the discharge summary. The patient's response to the continuing care plan shall be noted in the plan, or a note shall be made that the patient was not available and why. In the event of the death of a patient, a summary statement including this information shall be documented in the record.

**"Co-occurring disorder"** or **"COD"** means any combination of mental health and substance use disorder symptoms or diagnoses as determined by the current Diagnostic and Statistical Manual of Mental Disorders that affect a patient.

**"Courtesy Dosing"** means the act of dosing a methadone or buprenorphine patient from another clinic on a short term basis due to emergency or other extra ordinary circumstance.

**"Critical incident"** means an occurrence or set of events inconsistent with the routine operation of an approved treatment facility, or the routine care of a patient. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries (including automobile accidents) to the patient, patient family, staff and visitors; medication errors; neglect or abuse of a patient; fire; unauthorized disclosure of information; damage to or theft of property belonging to a patient or an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

**"Cultural competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

**"DEA"** means Drug Enforcement Administration.

**"Discharge planning"** means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.

**"Diskette"** means a compressed wafer form of methadone intended to be dissolved in water for consumption. For the purposes of this chapter methadone diskettes will not be considered to be the same as tablet methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff before the patient may leave the clinic with the dose.

**"Dispense"** means preparing, packaging, compounding and labeling for delivery, a prescription drug in the course of professional practice to an ultimate user by the lawful order of a physician.

**"Diversion"** means the unauthorized or illegal transfer of an opioid agonist or partial agonist treatment medication.

**"Diversion control plan"** or **"DCP"** means documented procedures to reduce the possibility that controlled substances are used for any purpose other than legitimate use.

**"Drug dispensing area"** means the specified and secured location established by the OTP for dispensing opioid agonist

or partial agonist drugs to the patients. The area shall be secure, meet all appropriate standards and be the only location within the facility where drugs are dispensed.

**"Drug test"** means the assessment of an individual to determine the presence or absence of illicit or non-prescribed drugs or alcohol or to confirm maintenance levels of treatment medication(s), by a methodology approved by the OTP medical director based on informed medical judgment and conforming to State and Federal law. This may include blood testing, oral-fluid and urine testing.

**"Exception request process"** means a process recording the justification of the need to make a change in treatment protocol for an opioid patient and submitted to SAMHSA using form SMA-168.

**"FDA"** Federal Food and Drug Administration.

**"Federal opioid treatment standards"** means the established standards of SAMHSA, CSAT and the DEA that are used to determine whether an OTP is qualified to engage in medication assisted opioid treatment.

**"HIPAA"** means Health Insurance Portability and Accountability Act

**"Holiday"** means those days recognized by the State of Oklahoma as holidays.

**"Individualized service planning"** means the ongoing process by which a clinician and the patient identify and rank problems, establish agreed upon goals, and decide on the treatment process and resources to be utilized.

**"Interim maintenance treatment"** means maintenance treatment provided in conjunction with appropriate medical services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.

**"JC"** or **"TJC"** means the Joint Commission.

**"Licensed Behavioral Health Professional"** or **"LBHP"** means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

- (i) Psychology;
- (ii) Social Work (clinical specialty only);
- (iii) Professional Counselor;
- (iv) Marriage and Family Therapist;
- (v) Behavioral Practitioner; or
- (vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

**"Licensure candidate"** means practitioners actively and regularly receiving board approved supervision, and extended

supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

**"Liquid methadone"** means a liquid concentrate of methadone meant to be mixed with water for ingestion.

**"Lock box"** means a container with a combination lock or key lock entry system for securing take home medications. The box must have the ability to lock and should be secure enough to thwart access by children.

**"Long-term care facilities"** means a facility or institution that is licensed, certified or otherwise qualified as a nursing home or long term care facility by the state in which methadone or buprenorphine treatment services are rendered. This term includes skilled, intermediate, and custodial care facilities which operate within the terms of licensure.

**"Long-term detoxification treatment"** means detoxification treatment for a period of more than 30 days but less than 180 days.

**"Medical director"** means a physician, licensed to practice medicine in Oklahoma, who assumes responsibility for the administration of all medical services performed by an OTP, either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision, unless otherwise indicated in this chapter. This includes ensuring the program is in compliance with all federal, state, and local laws and regulations regarding the medical treatment of dependence on an opioid drug.

**"Medical withdrawal"** means a condition created by administering an opioid agonist or partial agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

**"Medication unit"** means a satellite facility established as part of, but geographically separate from, an OTP from which appropriately licensed practitioners dispense or administer an opioid agonist or partial agonist treatment medication or collect samples for drug testing or analysis. No medical or clinical interventions related to OTP treatment can be conducted at this site.

**"Non-oral methadone"** means an injectable form of methadone not allowed for use by an OTP.

**"Nurse practitioner"** means a registered nurse who is prepared through advanced education and clinical training, to provide a wide range of health care services.

**"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

**"Oklahoma Administrative Code"** or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the

compilation of codified rules authorized by 75 O.S. § 256(A) (1) (a) and maintained in the Office of Administrative Rules.

**"OBNDD"** means the Oklahoma Bureau of Narcotics and Dangerous Drug Control.

**"Oklahoma state-issued identification card"** means a photo identification card issued by the Oklahoma Department of Motor Vehicles for use in identification.

**"Opiate drug"** means any of a class of drugs also called narcotics derived from the opium poppy or containing opium and with analgesic or sedative effects that can form sustain or enhance addiction and physical dependency.

**"Opioid agonist"** means a drug that has an affinity for and stimulates physiologic activity at cell receptors in the central nervous system normally stimulated by opioids. Methadone is an opioid agonist.

**"Opioid agonist or partial agonist treatment medication"** means a prescription medication, such as methadone, buprenorphine or other substance scheduled as a narcotic under the Federal Controlled Substances Act (21 U.S.C. Section 811) that is approved by the U.S. Food and Drug Administration for use in the treatment of opiate addiction or dependence.

**"Opioid antagonist"** means a drug that binds to cell receptors in the central nervous system that normally are bound by opioid psychoactive substances and that blocks the activity of opioids at these receptors without producing the physiologic activity produced by opioid agonists. Naltrexone is an opioid antagonist.

**"Opioid dependence"** means a cluster of cognitive, behavioral, and physiological symptoms in which an individual continues use of opioids despite significant opioid-induced problems. Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.

**"Opioid drug"** means any of a class of drugs also called narcotics, having a dependence-forming or dependence-sustaining liability similar to morphine. Originally a term for synthetic narcotics only, but for the purposes of this chapter and unless otherwise specified, currently used to describe both opium based and synthetic narcotics. These drugs have analgesic or sedative effects.

**"Opioid partial agonist"** means a drug that binds to, but incompletely activates, opiate receptors in the central nervous system, producing effects similar to those of an opioid agonist but, at increasing doses, does not produce as great an agonist effect as do increased doses of an agonist. Buprenorphine is a partial opioid agonist.

**"Opioid treatment"** means the dispensing of opioid agonist or partial agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid dependence. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment or comprehensive maintenance treatment, interim maintenance treatment

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and treatment provided in medication units, long term care facilities or hospitals.

**"Opioid Treatment Program (OTP)"** An organization which has been certified by ODMHSAS to provide opioid treatment whose certification has not been suspended, revoked, or surrendered to the department, referred to in statute as an Opioid Substitution Treatment Program.

**"Pain management"** means the successful management of chronic pain or a chronic pain disorder.

**"Patient record"** or **"medical record"** means the collection of written information about a patient's evaluation or treatment that includes the intake data, evaluation, service plan, description of services provided, medications as prescribed, continuing care plan, and discharge information on an individual patient.

**"Parenteral"** means injected, infused or implanted, used to describe drug administration other than oral or anal.

**"Peak test"** see Peak and Trough.

**"Peak and trough test"** means a therapeutic monitoring of serum methadone levels to determine the most appropriate dosing strategy for the individual patient, requiring at least two blood samples be drawn. The initial sample taken immediately prior to the daily dose and twenty four hours after the previous day's dose allowing the lowest level or "trough" to be identified. The second sample taken four hours after dosing allows the highest level or "peak" to be identified.

**"Physician assistant"** means a licensed or certified mid-level medical practitioner who works under the supervision of a licensed physician (MD) or osteopathic physician (DO).

**"Program physician"** A licensed physician who provides medical treatment and counsel to the patients of an OTP while under the supervision of the medical director.

**"Program sponsor"** A person named in the application for an OTP permit who is responsible for the operation of the OTP and who assumes responsibility for all its employees, including any practitioners, staff, or other persons providing medical, rehabilitative, or ~~counseling~~ therapy services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

**"Psychotherapy" or "Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

**"Rehabilitation Services"** means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life. Rehabilitation services must be provided by a Licensed Behavioral Health Professional (LBHP), Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II)

**"SAMHSA"** means the Substance Abuse and Mental Health Services Administration.

**"Sentinel event"** means a type of critical incident that is an unexpected occurrence involving the death or serious injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for an immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events (including medication overdoses by patients and associates of patients) resulting in serious injury or death.

**"Service Provider"** means a person who is allowed to provide services for those with substance use disorders within the regulation and scope of their certification level or license.

**"Short-term detoxification treatment"** means detoxification treatment for a period not in excess of 30 days.

**"State Opioid Treatment Authority"** or **"SOTA"** is the agency designated by the Governor or other appropriate official designated by the Governor to exercise the responsibility and authority within the State or Territory for governing the treatment of opioid dependence with an opioid drug. For Oklahoma it is the Oklahoma Department of Mental Health and Substance Abuse Services.

**"STD"** means sexually transmitted disease.

**"Street outreach"** means methods of direct intervention/prevention with high risk populations for HIV, HCV, tuberculosis and other infectious and communicable diseases.

**"Tablet methadone"** means methadone in a tablet form intended to be taken orally. For the purposes of this chapter diskettes will not be considered to be tablet methadone. Tablet methadone is not allowed for use by an OTP.

**"Take-home privilege or take home medication"** means one or more doses of an opioid agonist or partial agonist treatment medication dispensed to a patient for use off the premises.

**"Therapeutic hour(s)"** means the amount of time in which the patient was engaged with a service provider in identifying, addressing, and/or resolving those issues that have been identified in that patient's treatment plan.

**"Transient consumer"** means a methadone or buprenorphine patient from another geographic location requiring "courtesy dosing".

**"Trough test"** see Peak and Trough.

**"Urine analysis (UA)"** means a urine sample taken to determine if metabolites are present indicating the use of drugs.

**"Withdrawal treatment"** means either administrative withdrawal, or medical titration and withdrawal from any drug or medication until the patient has achieved a drug free state.

### 450:70-1-4. Applicability

(a) This chapter is applicable to all certified substance use disorder treatment facilities and organizations providing medication assisted opioid treatment, opioid withdrawal or opioid maintenance using methadone or buprenorphine including but not limited to ~~counseling~~ therapy, rehabilitation services and substance use disorder treatment services including methadone

and buprenorphine maintenance services, short term withdrawal management, long term withdrawal management or interim maintenance services which are statutorily required to be certified and approved by the ODMHSAS, the Alcohol and Drug Abuse Prevention, Training and Rehabilitation Authority [43A O.S. § 3-601,(c)].

(b) Any conviction for a violation of any rule in this Part which has been promulgated pursuant to the provisions of 43A O.S. § 3-601 shall be a felony [43A O.S. § 3-601(B)].

**SUBCHAPTER 2. FACILITY INFRASTRUCTURE  
REQUIRMENTS**

**450:70-2-3. Tobacco-free campus**

(a) The facility shall provide a tobacco-free campus for its employees, consumers and visitors. Possession and use of any tobacco product is prohibited on the grounds of the facility by employees, consumers, volunteers and visitors.

(b) Facility will visibly post signs on the property notifying consumers, employees and visitors that the visible possession and use of tobacco products is prohibited.

(c) Facility employees shall not share tobacco or tobacco replacement products with consumers.

(d) The facility shall offer assistance to employees who are tobacco users while he or she is employed by the facility. The assistance shall include, but is not limited to, the provision of information on the health impact of continued tobacco use; the integrated assessment of consumer's tobacco use into standard practice; referrals to tobacco cessation programs such as the Oklahoma Tobacco Helpline; the provision of or access to FDA-approved prescription and/or non-prescription medications for the treatment of nicotine dependence when available; the delivery of evidence-based behavioral interventions for tobacco use cessation by ~~counselors~~therapists and other clinicians; and provision of appropriate follow-up to facilitate cessation intervention and prevent relapse.

(e) The facility shall always inquire of the consumers' tobacco use status and be prepared to offer treatment upon request of the consumer.

(f) Compliance with this Section shall be determined by visual observation; posted signs; consumer and staff interviews; and a review of the facility's policy, procedures and other supporting documentation provided.

**SUBCHAPTER 3. FACILITY RECORD SYSTEM**

**PART 3. INTAKE AND ADMISSION  
ASSESSMENT**

**450:70-3-5.9. Assessment and record content -  
Supportive service array**

(a) The OTP shall have a written policy and procedure that shall be made available to all patients, outlining rehabilitation services. Minimum services include:

(1) Individual ~~counseling~~therapy or rehabilitation services until the patient is fully stabilized and as indicated in this chapter;

(2) Group and family ~~counseling~~therapy or rehabilitation services for spouses, parents, or significant others and as indicated in this chapter;

(3) Vocational or educational ~~counseling~~services and referral and as indicated in this chapter; and

(4) Referral for additional services as outlined by the individualized treatment plan.

(b) Compliance with 450:70-3-5.9 may be determined by:

(1) A review of policies and procedures,

(2) Treatment records, and

(3) Other facility documentation.

**PART 5. BIOPSYCHSOCIAL ASSESSMENT**

**450:70-3-7. Biopsychsocial assessment**

(a) All OTPs shall complete a biopsychsocial assessment which gathers sufficient information to assist the patient in developing an individualized treatment plan. The OTP may utilize the current edition of the Addiction Severity Index (ASI) or develop a biopsychsocial assessment which contains, but not be limited to, the following:

(1) Identification of the patient's strengths, needs, abilities, and preferences;

(2) Presenting problem and history of the presenting problem;

(3) Previous treatment history, including opioid substitution therapy:

(A) Mental health,

(B) Substance abuse, and

(4) Health history and current biomedical conditions and complications;

(5) Alcohol and drug use history;

(6) History of trauma;

(7) Family and social history, including family history of alcohol and drug use;

(8) Educational attainment, difficulties, and history;

(9) Cultural and religious orientation;

(10) Vocational, occupational and military history;

(11) Sexual history, including HIV, AIDS and STD at-risk behaviors;

(12) Marital or significant other relationship history;

(13) Recreational and leisure history;

(14) Legal history;

(15) Present living arrangement;

(16) Economic resources;

(17) Level of functioning;

(18) Current support system;

(19) Current medications, including the name of prescribing physician, name of medication, strength and dosage, and length of time the consumer has been on the medication;

(20) Patient's expectations in terms of service; and

(21) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.

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- (b) The assessment shall be completed by a LBHP or licensure candidate.
- (c) The assessment shall be completed as soon as possible after admission and no later than the third (3) ~~counseling therapy or rehabilitation service~~ visit.
- (d) In the event of a consumer re-admission after one (1) year of the last biopsychosocial assessment, a new biopsychosocial assessment shall be completed. If readmission occurs within one (1) year after the last biopsychosocial assessment, an update shall be completed.
- (e) Compliance with 450:70-3-7 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## PART 7. SERVICE PLANNING

### 450:70-3-8. Individualized service planning

- (a) Upon completion of the admission evaluation, an individualized service plan shall be developed by a LBHP or licensure candidate. The individualized service plan shall include, but not be limited to:
  - (1) Presenting problems or diagnosis;
  - (2) Strengths, needs, abilities, and preferences of the patient;
  - (3) Goals for treatment with specific, measurable, attainable, realistic and time-limited;
  - (4) Type and frequency of services to be provided;
  - (5) Dated signature of primary service provider;
  - (6) Description of patient's involvement in, and responses to, the service plan, and his or her signature and date;
  - (7) Individualized discharge criteria or maintenance;
  - (8) Projected length of treatment;
  - (9) Measurable long and short term treatment goals;
  - (10) Primary and supportive services to be utilized with the patient;
  - (11) Type and frequency of therapeutic activities in which patient will participate;
  - (12) Documentation of the patient's participation in the development of the plan; and
  - (13) Staff who will be responsible for the patient's treatment.
- (b) The service plan shall be based on the patient's presenting problems or diagnosis, intake assessment, biopsychosocial assessment, and expectations of their recovery.
- (c) Frequency of services shall be determined by mutual agreement between the facility treatment team and the patient.
- (d) Service plans shall be completed by the fourth (4) ~~counseling therapy or rehabilitation service~~ visit after admission.
- (e) The service plan review should occur according to the time frame required by the agency but, no less often than every six (6) months; and further, is required by any of the following situations:
  - (1) Change in goals and objectives based upon patient's documented progress, or identification of any new problem;

- (2) Change in primary ~~counselor~~ therapist or rehabilitation service provider assignment;
- (3) Change in frequency and types of services provided;
- (4) Critical incident reports;
- (5) Sentinel events; or
- (6) Phase change.
- (f) Each patient accepted for treatment shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment. The service plan also must identify the frequency and intensity of services to be provided.
- (g) The plan must be reviewed and updated to reflect that patient's personal history, current needs for medical, social, and psychological services, and current needs for education, vocational rehabilitation, and employment services.
- (h) The OTP will provide adequate and appropriate ~~counseling therapy or rehabilitation services~~ to each patient as clinically necessary. This ~~counseling therapy~~ shall be provided by a program ~~counselor, qualified by education, training, or experience to assess the psychological and sociological background of patients, to contribute to the appropriate service plan for the patient and to monitor patient progress~~ LBHP or Licensure Candidate. Rehabilitation services must be provided by a LBHP, Licensure Candidate, CADC or CM II.
- (i) Compliance with 450:70-3-8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

## SUBCHAPTER 4. SERVICES SUPPORT AND ENHANCEMENT

### PART 1. STAFF SUPPORT

#### 450:70-4-2. Clinical supervision

- (a) All OTPs shall provide clinical supervision for those delivering direct services and shall be provided by persons qualified to provide clinical supervision as determined by state licensure or certification.
- (b) All OTPs shall have written policy and procedures, operational methods, and documentation regarding clinical supervision for all direct treatment staff and service staff. These policies shall include, but are not limited to:
  - (1) Credentials required for the clinical supervisor;
  - (2) Specific frequency for case reviews with treatment and service providers;
  - (3) Methods and time frames for supervision of individual, group, and educational treatment services; and
  - (4) Written policy and procedures defining the program's plan for appropriate ~~counselor~~ provider-to-patient ratio, and a plan for how exceptions may be handled.
- (c) Ongoing clinical supervision should address:
  - (1) The appropriateness of services selected for the patient;

- (2) Service effectiveness as reflected by the patient meeting his/her individual goals; and
- (3) The provision of feedback that enhances the clinical skills of direct service staff and service providers.
- (d) Compliance with 450:70-4-2 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Clinical services manuals,
  - (3) Clinical supervision manuals,
  - (4) Documentation of clinical supervision,
  - (5) Personnel records,
  - (6) Treatment records,
  - (7) Interviews with staff; and
  - (8) Other facility documentation.
- (e) Failure to comply with 450:70-4-2 will result in the initiation of procedures to deny, suspend and/or revoke certification.

**450:70-4-4.3. Staffing - Training**

- (a) The OTP shall have written policy and procedure requiring each person engaged in the medication assisted recovery services for a significant opioid use disorder to have sufficient education, training, and/or experience to enable that person to perform the assigned duties and functions. This includes specific training in opioid related treatment service options. All physicians, nurses, and other licensed professional care providers, including counselors, therapists and rehabilitation service providers, must comply with the credentialing requirements of their respective professions. Hiring preference should be given to staff with substance use disorder and/or opioid use disorder treatment specific licenses and certifications.
  - (1) All direct service and medical staff shall receive training relevant to service delivery in a medication assisted opioid treatment setting. There shall be—seven (7) clock hours of such training during each year.
  - (2) All direct service staff shall receive initial training and ongoing training updates for all personnel employed by the treatment facility covers at a minimum:
    - (A) Rights of the patients served;
    - (B) Person and family centered services;
    - (C) The prevention of violence in the workplace;
    - (D) Confidentiality requirements;
    - (E) Cultural competency; and
    - (F) Expectations regarding professional conduct.
  - (3) All physicians working in an OTP should have, or be in the process of obtaining, specialty certification and/or licensure related to medication assisted opioid and/or substance use disorder treatment.
- (b) Compliance with 450:70-4-4.3 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Credentialing and privileging documents,
  - (3) Training records,
  - (4) Interviews with staff, and
  - (5) Other facility documentation.

**PART 3. ORGANIZATIONAL AND FACILITY MANAGEMENT**

**450:70-4-7. Operations - Hours**

- (a) The OTP shall have policy and procedure to define operations for a minimum of forty (40) hours per week, (excluding holidays and emergency closure) in outpatient settings and twenty-four (24) hours per day in inpatient and residential program settings.
- (b) The OTP shall have written policy and procedure for medication dispensing available at least six (6) days per week in outpatient settings; and seven (7) days per week in inpatient and residential settings with approval from SAMHSA.
- (c) The facility shall be publicly accessible and accommodate office space, individual and group counseling/therapy/rehabilitation service space, secure record storage, protect consumer confidentiality, and provide a safe, warm, welcoming, culturally and age appropriate environment.
- (d) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. To accomplish this, the OTP shall have written policy and procedure providing at least two (2) hours per day either prior to 9:00 a.m. or after 5:00 p.m. for dispensing medication and counseling/therapy/rehabilitation services.
- (e) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.
- (f) Clinical services shall be organized with scheduled treatment sessions that accommodate employed and parenting patients' schedules, and offer treatment services during the day, evening, or weekends.
- (g) Compliance with 450:70-4-7 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Personnel records,
  - (3) On-site verification,
  - (4) Interviews with staff, and
  - (5) Other facility documentation.

**450:70-4-7.4. Operations - Emergencies and exception for weekend dosing**

- (a) The OTP shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be posted for use by staff.
- (b) Crisis intervention and counseling/therapy/rehabilitation services shall be available when indicated.
- (c) If the OTP is closed on Sunday or for holidays, there shall be written policy and procedure describing the process for providing services to and dosing for those patients who are not assessed as appropriate to receive a single take home dose. The medical director shall be responsible for determining whether a patient can safely be dispensed opioid treatment drugs for unsupervised use. The basis for the decision shall be, at a minimum, the nine criteria listed in 450:70-4-8 (g), (1) through (9).
- (d) Compliance with 450:70-4-7.4 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Treatment records,

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- (3) Interviews with staff, and
- (4) Other facility documentation.

## SUBCHAPTER 6. SUBSTANCE USE DISORDER TREATMENT SERVICES

### PART 2. LEVELS OF TREATMENT SERVICES

#### 450:70-6-5. Withdrawal Management

- (a) Any OTP providing medication assisted recovery services shall provide both short and long term withdrawal management as defined in 450:70-6-7 and 450:70-6-8.
- (b) The OTP shall have written policy and procedure defining the protocols developed, implemented, and complied with for withdrawal management. Protocols shall:
  - (1) Promote successful withdrawal management;
  - (2) Require that dose reduction occur at a rate well tolerated by the patient;
  - (3) Require that a variety of ancillary services, such as mutual support groups, be available to the patient through the agency or through referral;
  - (4) Require that the amount of ~~counseling~~therapy/rehabilitation services available to the patient be increased prior to discharge; and
  - (5) Require that a patient be re-admitted to the agency or referred to another agency at the first indication of relapse unless it is an administrative withdrawal process.
  - (6) There is no minimum time in treatment requirement for patients receiving buprenorphine when granting take-home privileges.
- (c) Compliance with 450:70-6-5 may be determined by:
  - (1) A review of policies and procedures,
  - (2) Treatment records,
  - (3) Interviews with staff, and
  - (4) Other facility documentation.

#### 450:70-6-6. Administrative withdrawal

- (a) The OTP shall have written policy and procedure stating an infraction of program rules by a patient may result in administrative medical withdrawal from methadone or buprenorphine and termination from treatment services. All patients will be notified of this policy. The program shall develop specific program requirements to address noncompliance with program rules resulting in termination. The violation or noncompliance with rules shall be limited to:
  - (1) Threats of violence or actual bodily harm to staff or another patient, including abusive language or behavior;
  - (2) Disruptive behavior, loitering;
  - (3) Diversion of methadone, selling, distributing, using, or otherwise "dealing" in any illicit drug or chemical, including positive urine tests for non-prescribed medications and drugs;
  - (4) Continued unexcused absences from ~~counseling~~therapy/rehabilitation services and other support services;
  - (5) Involvement in criminal activities;

- (6) Any other serious rule violations; and
- (7) Non-payment of fees.

(b) The OTP shall ensure administrative medical withdrawal shall be scheduled in such a way as to minimize the psychological and physical effects of such withdrawal.

- (1) Administrative medical withdrawal shall be completed in a manner appropriate to the client's level of medication and the circumstances justifying such action;
- (2) Programs may facilitate a transfer to another program or referral to a medical facility in lieu of administrative medical withdrawal; and
- (3) Administrative withdrawal resulting from non-payment of fees cannot be accomplished in less than fifteen (15) days.
- (c) The OTP shall have written policy and procedure stating a patient experiencing administrative withdrawal shall be referred or transferred to an agency that is capable of, or more suitable for, meeting the patient's needs. The referral or transfer is documented in the patient record and the following information is documented in the patient record:
  - (1) The reason that the patient sought medical withdrawal or was placed on administrative withdrawal; and
  - (2) The information and assistance provided to the patient in managed withdrawal, medical withdrawal or administrative withdrawal.
- (d) Compliance with 450:70-6-6 may be determined by:
  - (1) A review of policies and procedures,
  - (3) Treatment records,
  - (4) Critical incident reports,
  - (5) Interviews with staff, and
  - (6) Other facility documentation.

#### 450:70-6-7. Short term managed withdrawal

- (a) The OTP shall have written policy and procedure regarding short term managed withdrawal treatment services.
- (b) There shall be written policy stating a patient may be admitted to short-term managed withdrawal regardless of age. Patients under the age of eighteen (18) may be admitted with written parent or guardian approval.
- (c) The program physician shall document in the patient record the reason for admitting the patient to short-term managed withdrawal.
- (d) Take-home medication is not allowed during short-term managed withdrawal.
- (e) A history of one year or more opioid dependence and an attempt at another form of treatment is not required for admission to short-term managed withdrawal.
- (f) No test or analysis is required except for the initial drug screening test, and a tuberculin skin test.
- (g) The initial treatment plan and periodic treatment plan evaluation required for comprehensive maintenance patients are required for short-term managed withdrawal-patients.
- (h) A primary ~~counselor~~LBHP, Licensure Candidate or CADC must be assigned by the program to monitor a patient's progress toward the goal of short-term withdrawal management and possible drug-free treatment referral.
- (i) Methadone is required to be administered daily by the OTP in reducing doses to reach a drug-free state over a period

not to exceed thirty (30) days. Buprenorphine shall be administered as determined by the OTP medical director.

(j) All other requirements of comprehensive maintenance treatment apply.

(k) Compliance with 450:70-6-7 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

**450:70-6-9. Interim maintenance treatment services**

(a) The OTP shall have documentation before providing interim maintenance treatment services indicating the written approval of both SAMHSA and ODMHSAS.

(b) The OTP shall have written policy and procedure stating the program sponsor may place an individual who is eligible for admission to comprehensive maintenance services in interim maintenance services if the individual cannot be placed in comprehensive maintenance treatment services within a reasonable geographic distance and within fourteen (14) days of application for admission to comprehensive maintenance treatment services.

(c) The OTP shall identify the maximum length of stay in interim opioid services is one hundred and twenty (120) days.

(d) The OTP shall provide an initial and a minimum of two (2) additional drug screens shall be taken from interim patients during the one hundred and twenty (120) days of interim services.

(e) The OTP shall have written policies and procedures outlining all criteria for transfer from interim maintenance to comprehensive maintenance services.

(f) The OTP shall have policy and procedure ensuring interim maintenance—services shall be provided in a manner consistent with all applicable Federal and State laws and regulations.

(g) The interim maintenance services program shall meet and/or possess all applicable Federal and State certifications, licensures, laws and regulations.

(h) The OTP shall have written policy and procedure stating all rules and requirements for comprehensive maintenance services apply to interim maintenance services with the exception of:

- (1) Opioid agonist medication is required to be administered daily and under observation. Unsupervised or take home dosing is not allowed.
- (2) A primary ~~counselor~~ LBHP, Licensure Candidate or CADC does not need to be assigned.
- (3) Interim maintenance is limited to two (2) one hundred and twenty (120) day episodes in any twelve (12) month period.
- (4) Educational, rehabilitative and ~~counseling~~ therapy services are not required.
- (5) An initial treatment plan and periodic updates are not required.

(i) Compliance with 450:70-6-9 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and

(4) Other facility documentation

**450:70-6-11. Programs using opioid antagonist or long acting opioid agonist**

(a) The OTP shall have written policy and procedure stating a certified substance abuse facility providing a program using an experimental opioid blockade or a long acting agonist or partial agonist in the treatment of an opioid use disorder shall have documentation of approval by the Federal Drug Administration; and comply with all other federal and state statutes and regulations governing such programs.

(b) The OTP shall have written policy and procedure stating the program shall provide at least two (2) hours of services per day before 8:00 A.M. or after 5:00 P.M. for dispensing and ~~counseling~~ therapy/rehabilitation services.

(c) The OTP shall have written policy and procedure stating that unless otherwise indicated all relevant sections of this chapter apply.

(d) Compliance with 70-6-11 may be determined by:

- (1) A review of facility policy and procedures, and
- (2) Documentation of FDA approval.
- (3) Other facility documentation.

**PART 3. PHASES OF TREATMENT SERVICES**

**450:70-6-15.3. Service - Clinical services**

(a) The OTP shall have written policy and procedure stating the OTP shall provide adequate medical, ~~counseling~~ therapy/rehabilitation services, vocational, educational, and other assessment and treatment services. These services must be available at the primary facility, except where the program sponsor has entered into a formal, documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to patients enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to all patients.

(b) Services shall be designed to provide a variety of professional diagnostic and primary medication assisted opioid treatment services for patients, and their families and significant others, whose emotional and physical status allows them to function in their usual environment.

(c) The OTP shall have written policy and procedure stating there will be referral to adequate and reasonably accessible community resources, vocational rehabilitation, education, and employment services for patients who either request such services or who have been determined through the assessment process to be in need of such services.

(d) The OTP shall have written policy and procedure stating patients accepted for opioid treatment shall attend prescribed ~~counseling~~ therapy/rehabilitation services as mandated in the individualized service plan and this chapter.

(e) Time in treatment shall not be a requirement for patients receiving buprenorphine when granting take-home privileges.

(f) Compliance with 450:70-6-15.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and

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- (3) Other facility documentation.

## 450:70-6-17.3. Service phases - Phase I

(a) Phase I consists of a minimum ninety (90)-day period in which the patient attends the program for observation of medication assisted opioid treatment daily or at least six (6) days a week. Phase I take-home dosage privileges are limited to a single dose each week including take home dosages required due to regularly scheduled clinic closures. All approved holidays allow an additional take-home dosage. The patient shall ingest all other doses under appropriate supervision at the clinic.

- (1) During Phase I, the patient shall participate in a minimum of four (4) sessions of counseling therapy or rehabilitation services per month with at least one (1) session being individual counseling therapy or rehabilitation service and/or case management.
  - (2) During Phase I, the service plan shall be reviewed and updated a minimum of once monthly.
- (b) Compliance with 450:70-6-17.3 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.4. Service phases - Phase II

(a) Phase II is designated for patients who have been admitted more than ninety (90) days, and who have successfully met all Phase I criteria.

- (1) During Phase II, the program may issue no more than two (2) take-home doses of methadone at a time including take-home dosages required due to regular and/or holiday scheduled clinic closures. With the exception of any take-home doses, the patient shall ingest all other doses under appropriate supervision at the clinic.
  - (2) The patient shall participate in at least two (2) counseling therapy or rehabilitation service sessions per month during the first ninety (90) days of Phase II, with at least one (1) of the sessions being individual counseling therapy or rehabilitation service and/or case management.
  - (3) After the initial ninety (90) days in Phase II, the patient shall participate in at least one (1) session of individual counseling therapy or rehabilitation service per month.
  - (4) The service plan shall be reviewed and updated at least once every three (3) months during Phase II.
- (b) Compliance with 450:70-6-17.4 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.5. Service phases- Phase III

(a) Phase III is designated for patients who have been admitted more than six (6) months and who have successfully completed Phase II criteria.

- (1) During Phase III, the program may issue no more than four (4) take-home doses of methadone plus closed and holiday days.
- (2) The patient shall participate in at least one (1) session of individual counseling therapy or rehabilitation

service and/or case management per month during Phase III.

- (3) The service plan shall be reviewed and updated at least every six (6) months during Phase III or more frequently if circumstances warrant.
- (b) Compliance with 450:70-6-17.5 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.6. Service phases - Phase IV

(a) Phase IV is designated for patients who have been admitted more than nine (9) months and who have successfully met progressive Phase III criteria.

- (1) During Phase IV, the program may issue one (1) week take-home doses plus closed and holiday days.
  - (2) The patient shall participate in at least one (1) session of individual counseling therapy or rehabilitation service and/or case management per month during this phase.
  - (3) The service plan shall be reviewed and updated at least every six (6) months during this phase.
- (b) Compliance with 450:70-6-17.6 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.7. Service phases - Phase V

(a) Phase V is designated for patients who have been admitted for more than one (1) year.

- (1) During Phase V, the program may issue two (2) weeks maximum take-home doses.
  - (2) The patient shall participate in at least one (1) session of individual counseling therapy or rehabilitation service or case management per month during this phase.
  - (3) The service plan shall be reviewed and updated at least every six (6) months during this phase.
- (b) Compliance with 450:70-6-17.7 may be determined by:
- (1) A review of policies and procedures,
  - (2) Treatment records, and
  - (3) Other facility documentation.

## 450:70-6-17.8. Service phases - Phase VI

(a) Patients who meet criteria for Phase VI, and who have been admitted to treatment for a minimum of one (1) year, and who are receiving thirty (30) days of take-home doses on July 1, 2007 shall be allowed to continue to be eligible to receive thirty (30) days of take-home doses of methadone after July 1, 2007.

- (1) If this patient is reduced in phase, the privilege of thirty (30) days take-home medication shall be withdrawn.
- (2) Once lost, the privilege to receive thirty (30) days of take-home medication shall not be available again.
- (3) If patient with the privilege to receive thirty (30) days of take-home medication changes clinics, it shall be the decision of the receiving clinic to either continue

or ignore the continuation of the thirty (30) take-home medication privilege.

(b) Phase VI is designated for patients who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A patient may enter this phase at any time in the treatment and rehabilitation process.

(1) During Phase VI, the medical director determines take-home doses based on stability.

(2) During Phase VI, the ~~counselor~~ LBHP, Licensure Candidate or CADC determines the frequency of ~~counseling~~ therapy or rehabilitation service sessions with input from the patient. At the onset of Phase VI, the patient may require an increased level of ~~counseling~~ therapy or rehabilitation service and other support services.

(3) The ~~counselor~~ LBHP or Licensure Candidate and patient develop a continuing care plan prior to the successful completion of treatment.

(c) The OTP shall have written policy and procedure stating these guidelines when a patient is transferring to another clinic or level of care.

(1) The admitting program shall obtain from the patient an authorization for disclosure of confidential information, for the purpose of obtaining accurate and current information concerning the patient's treatment at the former program.

(2) The medical director or program physician shall not allow the patient to attend the clinic less frequently than the most recent schedule allowed at the former program unless:

- (A) Copies of the patient's records are obtained to sufficiently document the patient's satisfactory adherence to all relevant federal and state regulations for the required time in treatment; and
- (B) the physician has completed an evaluation of the patient.

(3) At a minimum, staff from the admitting program shall document in the patient record and staff from the transferring program must provide the following information before the initial dose of methadone or buprenorphine is administered to a transfer patient:

- (A) The last date and amount of opioid treatment medication drug administered or dispensed at the former program;
- (B) The length of time in continuous treatment;
- (C) The most recent record of clinic attendance;
- (D) The name, address, and telephone number of the program contacted;
- (E) The date and time of the contact; and
- (F) The name of the program employee furnishing the information.

(d) Compliance with 450:70-6-17.8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

[OAR Docket #19-555; filed 6-5-19]

**TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #19-579]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Petition Procedures

550:1-5-5. Qualified domestic relations orders [AMENDED]

Subchapter 7. Collections and Disbursements

550:1-7-4. Vouchers payable to an estate, including a successor in interest of a decedent [AMENDED]

**AUTHORITY:**

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 26, 2018

**COMMENT PERIOD:**

December 17, 2018 - February 13, 2019

**PUBLIC HEARING:**

February 20, 2019

**ADOPTION:**

February 20, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 25, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendment to OAC 550:1-5-5 added subsection (f) to provide that the rules in the preceding subsections (c), (d), and (e) apply only to qualified domestic relations orders that meet the requirements of 11 O.S. § 50-124 prior to January 1, 2020.

The proposed amendment to OAC 550:1-7-4 provides that a decedent's successor in interest may be an eligible recipient for vouchers (provided certain conditions are met) and identify a small estate as one whose Oklahoma net asset value does not exceed the maximum value stated in 58 O.S. Section 393, which is currently \$50,000.00.

**CONTACT PERSON:**

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 5. PETITION PROCEDURES**

**550:1-5-5. Qualified domestic relations orders**

(a) The Oklahoma Police Pension and Retirement System shall submit only that information which reflects the member's contribution history and/or benefit amount.

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(b) Said information shall not be furnished to any person unless prior written consent of the member is obtained or an order is issued by a court of competent jurisdiction.

(c) When a qualified domestic relations order is issued by a court of competent jurisdiction prior to the member entering the Deferred Option Plan and the qualified domestic relations order does not specifically address the division of the member's Deferred Option Plan account, the following shall apply:

(1) At the time of the issuance of the qualified domestic relations order, if the member has not entered the Deferred Option Plan but subsequently does so, the alternate payee's monthly pension amount is deposited into the Deferred Option account for the alternate payee's benefit and draws interest at the same rate as that of the member. When the member terminates the Deferred Option Plan, the alternate payee has the same options and rights as the member has relating to the payment of the Deferred Option Plan account.

(2) At the time of the issuance of the qualified domestic relations order, if the member has entered the Deferred Option Plan, the alternate payee's monthly pension amount is deposited in the Deferred Option Plan account for the alternate payee's benefit, draws interest at the same rate as that of the member, and the alternate payee receives a share of the municipality's contributions to the Deferred Option Plan account commensurate with the alternate payee's proportion of the total monthly pension amount.

(d) Provided the qualified domestic relations order does not state otherwise, whenever a member requests a refund of contributions, the alternate payee is entitled to a refund of contributions commensurate with the alternate payee's proportion of the total monthly pension amount.

(e) Provided the qualified domestic relations order does not state otherwise, whenever a retired member receives a cost of living adjustment, the alternate payee is entitled to a cost of living adjustment commensurate with the alternate payee's proportion of the total monthly pension amount.

(f) The rules in the preceding subsections (c), (d), and (e) shall only apply to a qualified domestic relations order that meets the requirements of 11 O.S. § 50-124 prior to January 1, 2020.

## SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS

### 550:1-7-4. Vouchers payable to an estate, including a successor in interest of a decedent

(a) Conditions for obtaining voucher payable to an estate, including a successor in interest of a decedent. The Oklahoma Police Pension and Retirement System will issue a voucher to an estate or other successor in interest of a decedent upon the following conditions being met:

(1) ~~For estates whose fair market value of property located in this state owned by the decedent and subject to disposition by of any amount, a voucher will or intestate succession at the time of the decedent's death, less liens and encumbrances, exceed Twenty Thousand~~

~~Dollars (\$20,000.00), be issued to the estate if the personal representative (or other interested party) of the estate of the deceased must have filed a probate action in a court of competent jurisdiction, have and the personal representative has been issued either letters testamentary or letters of administration, and must furnish~~ has furnished the Oklahoma Police Pension and Retirement System with such letters testamentary or letters of administration and the employer identification number assigned to the estate by the Internal Revenue Service.

(2) For estates whose fair market value of property located in this state owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, less liens and encumbrances, does not exceed ~~Twenty~~ the dollar limit stated in 58 O.S. Section 393 (Fifty Thousand Dollars (\$20,000.00—\$50,000.00) in 2018), the provisions of 58 O.S. Sections 393 and 394 shall apply. ~~In addition,~~ A voucher will be issued to each successor in interest to the decedent upon presentation to the Oklahoma Police Pension and Retirement System of an affidavit made by or on behalf of the successor in interest that complies with 58 O.S. Section 393 and the Social Security Number or the employer identification number assigned to the estate—successor in interest by the Internal Revenue Service—must be furnished to the Oklahoma Police Pension and Retirement System.

(b) **Payment.** Vouchers payable to an estate or a successor in interest shall be mailed or directly deposited by the Oklahoma Police Pension and Retirement System no earlier than the last business day of the month following Board approval.

[OAR Docket #19-579; filed 6-7-19]

## TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 15. OKLAHOMA POLICE DEFERRED OPTION PLAN

[OAR Docket #19-580]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

550:15-1-2. Forward drop [AMENDED]

### AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendment to OAC 550:15-1-2 is to clarify interest and allow a DROP participant to designate one or more recipients to be beneficiaries of any undistributed DROP balance at the time of the participant's death, or if none, to the participant's surviving spouse, or if none, to the participant's estate.

**CONTACT PERSON:**

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**550:15-1-2. Forward drop**

**(a) Application.**

- (1) The applicant must have twenty (20) years or more of credited service with the Oklahoma Police Pension and Retirement System to be eligible.
- (2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan. Forms will be provided by the Oklahoma Police Pension and Retirement System.
- (3) The effective date of membership will be the first day of the month.
- (4) Once the Board has approved a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the Oklahoma Police Deferred Option Plan is irrevocable as long as the member remains employed.

**(b) Contributions.**

- (1) The final member contribution made to the Oklahoma Police Pension and Retirement System shall be for the last pay period prior to the first of the month in which the member becomes a participant in the Oklahoma Police Deferred Option Plan.
- (2) The employer's contribution will continue to the Oklahoma Police Pension and Retirement System.
- (3) The member's option account shall be credited fifty percent (50%) of the employer's contribution received for the member and the Oklahoma Police Pension and Retirement System shall be credited fifty percent (50%). The credit to the member's option account shall be made the next work day after receipt of the employer's contribution.
- (4) Only the member's portion of the employer's contribution will be credited to the member's option account. No other contributions will be accepted.
- (5) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of five

(5) years, contributions will no longer be credited to the member's option account.

**(c) Benefits.**

- (1) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.
- (2) The member's service retirement benefit is frozen and at no time will he/she be allowed to increase his/her pension benefit due to additional years of service.
- (3) The monthly retirement benefit will be credited to the member's option account the last day of the month.
- (4) A member who participates in this plan shall be eligible to receive cost of living increases.

**(d) Interest.**

- (1) ~~The~~Subject to paragraph (6) of this subsection, the member's option account shall earn interest at a rate of two percent (2%) below the rate of return of the total investment portfolio of the System, but no less than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.
- (2) The Fund's annual rate of return shall be calculated and certified by the Board's financial consultant. The annual rate of return shall be for the fiscal year ending June 30.
- (3) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit times the certified annual rate of return, less two percent (2%), divided by 365 days times the number of days the deposit was credited to the member's option account for the fiscal year.
- (4) Each member shall receive an itemized statement at least on an annual basis beginning with interest credited at June 30, 1991.
- (5) Upon completion of the five year term in the Oklahoma Police Deferred Option Plan or earlier termination of employment by the member, annual interest calculated through the last day of the month employed and certified by the Board's financial consultant will be credited to the member's option account provided the annual rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate then the member's option account will be credited at the assumed interest rate of the last actuarial report.
- (6) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of the five (5) years, the member's option account if left in the Plan, ceases to earn interest unless the member made a timely election pursuant to the Deferred Option Payout Provision Policy. Effective July 1, 2006, pursuant to the Deferred Option Payout Provision Policy, a retired member who has completed participation in the Oklahoma Police Deferred

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Option Plan under the Forward Drop or the Back Drop provisions may elect within thirty (30) days following termination of employment with a participating municipality to leave his or her Deferred Option Payout Account balance in the Plan. Under the Deferred Option Payout Provision Policy, the retired member's Deferred Option Payout Account balance will be commingled and invested with the total pension fund and as such the retired member will not be able to direct his or her investments.

(7) At the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan, the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such termination has at all times included reemployment of a member by a participating municipality but only in a position not covered under the System or as a police chief. Thus, such a member would receive in-service distributions of such member's accrued monthly retirement benefit from the System.

(e) **Payment.**

(1) The member shall make application to terminate participation in the Oklahoma Police Deferred Option Plan a minimum of ninety (90) days prior to termination of employment with the participating municipality. The Oklahoma Police Pension and Retirement System shall have a minimum of ninety (90) days from the date of receipt of members' application to terminate participation in the Oklahoma Police Deferred Option Plan in which to process said application and make payment, unless the member has made an affirmative election to participate in the Deferred Option Payout Provision.

(2) The member should make payment selection a minimum of thirty (30) days prior to the distribution date. The form on which payment selection must be submitted will be provided by the System.

(3) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by the Oklahoma Police Deferred Option Plan. This payment will be made after the last contribution has been received and interest applied following termination of employment and after receipt of the completed payment selection form.

(4) The member may select a direct rollover of his or her distribution in accordance with OAC 550:1-7-5.

(5) The member may select an annuity to be provided by a third party. The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the annuity provider.

(6) The member may select to participate in any other method of payment if approved by the State Board.

(7) Once the member's option account has been paid directly to the member, or as a Direct Rollover or to the member's annuity provider, the member shall not have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

(f) ~~Beneficiaries.~~ **Designated Recipients.** If the participant dies during the period of participation in the Oklahoma Police

Deferred Option Plan, a ~~beneficiary~~ recipient designated by the participant may elect to receive a lump sum payment equal to the account balance of the participant. ~~A beneficiary~~ **Designated recipient** may elect a Direct Rollover of the account balance in accordance with OAC 550:1-7-5; if the recipient qualifies as a Distributee under 11 O.S. Section 50-114.2. If there is no ~~beneficiary~~ **designated recipient** or if the ~~beneficiary~~ **designated recipient** predeceases the participant, a lump sum payment shall be paid to the surviving spouse who was married to the participant for the thirty (30) continuous months immediately preceding the participant's death, provided a surviving spouse of a participant who died while in, and as a consequence of, the performance of the participant's duty for a participating municipality, shall not be subject to the thirty-month marriage requirement for survivor benefits, or if no surviving spouse to the estate of the participant. Once paid out directly to the ~~beneficiary (ies)~~ **designated recipient or surviving spouse** or as a Direct Rollover, or to the estate of the member, ~~neither the beneficiary (ies) nor the none of the following:~~ the designated recipients, surviving spouse or estate of the member shall have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

[OAR Docket #19-580; filed 6-7-19]

## TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

[OAR Docket #19-535]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

600:10-1-6. Experience prerequisite [AMENDED]

**AUTHORITY:**

Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 9, 2018

**COMMENT PERIOD:**

December 18, 2018 to January 17, 2019

**PUBLIC HEARING:**

February 1, 2019

**ADOPTION:**

February 1, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 1, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 15, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments to Title 600, Chapter 10 at OAC 600:10-1-6 will add required language pursuant to the provisions of 59 O.S. 4003 (A) pertaining to a one-time one-year waiver of fees associated with the initial licensure or certification for low-income individuals as Real Estate Appraisers.

**CONTACT PERSON:**

Christine McEntire, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, Five Corporate Plaza, 3625 N.W. 56th Street, Suite 100, Oklahoma City, OK 73112 (405) 522-2475.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 15, 2019:**

**600:10-1-6. Experience prerequisite**

(a) An original certification as a State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser shall not be issued to any person who does not possess the minimum experience criteria set forth by the Appraiser Qualifications Board of the Appraisal Foundation provided any state licensed appraiser who becomes state licensed prior to July 1, 2001, shall not be required to attain the minimum requirements of experience promulgated by the Appraiser Qualifications Board to maintain certification as a state licensed appraiser.

(b) Applications for certification as a State Licensed Appraiser or State Certified Residential Appraiser must be accompanied by a One Hundred Fifty Dollar (\$150.00) non-refundable application fee. Applications for certification as a State Certified General Appraiser must be accompanied by a Two Hundred Twenty Five Dollar (\$225.00) non-refundable application fee.

(c) Pursuant to the provisions of 59 O.S. 4003 A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification is a low-income individual, the Board shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

(ed) Experience credit shall be allowed in accordance with the guidelines set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation.

(de) Applicants for the State Licensed, State Certified Residential, or State Certified General classifications shall submit, in addition to the approved application form, properly completed experience log forms according to the basic form approved by the Board. Additionally, applicants for either the State Licensed, State Certified Residential, or State Certified General classifications shall submit the following upon request by the Board;

(1) A letter of verification from a third party (or parties, i.e., employer, appraiser supervisor, etc.) stating and confirming direct knowledge that the applicant has achieved the stated hours of real estate appraisal experience, and

(2) Copies of written real estate appraisal work product or work files.

(ef) The requirements of USPAP shall not apply to the Board, its agents, committee members, and staff when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

[OAR Docket #19-535; filed 6-4-19]

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

[OAR Docket #19-549]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 23. Oklahoma Higher Learning Access Program
- 610-25-23-4. Program requirements [AMENDED]
- 610-25-23-7. Payment of awards; policies and limitations [AMENDED]
- 610-25-23-8. Administrative responsibilities [AMENDED]

**AUTHORITY:**

Oklahoma State Regents for Higher Education; 70 O.S. §2601 et seq.; 70 O.S. §3206 (i).

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

September 7, 2018

**COMMENT PERIOD:**

October 1, 2018 through October 31, 2018

**PUBLIC HEARING:**

None

**ADOPTION:**

December 6, 2018

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

December 7, 2018

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed permanent rule revisions are necessary for three reasons:

(a) To incorporate changes from HB 3592 passed during the 2018 legislative session related to the return of award funds when a student withdraws from a course in college.

(b) To incorporate changes approved as emergency rules earlier in 2018 that clarify the student requirements to "attend school regularly," "refrain from substance abuse," and "refrain from commission of crimes or delinquent acts."

(c) To include language related to the prohibition of awards for noncredit remedial courses as required by SB 529 passed during the 2017 session. Return of Award Funds for Certain Course Withdrawals: HB 3592 requires that award funds be returned to the program when a student withdraws from a college course prior to the end of the add/drop period for the semester in which the student is enrolled. This requirement is consistent with current program procedures.

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Clarification Related to Student Conduct Requirements: The current language in the rules states that "compliance with the program requirements for attending school regularly, refraining from substance abuse, and refraining from criminal or delinquent acts shall be determined according to the local school district's policy." The proposed revisions specify the following:

(a) "Attend school regularly" will mean that the student was in attendance at least eighty percent (80%) of each school year, excluding absences excused by the school.

(b) "Refrain from substance abuse" will mean that the student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law for an offense involving a controlled dangerous substance, as defined in the Oklahoma Statutes.

(c) "Refrain from the commission of a crime or delinquent act" will mean that student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law.

The revisions also direct local school districts to report to the State Regents the compliance or noncompliance of students with the three conduct requirements. This revision would also align the rule with guidance provided by the office of the Oklahoma Attorney General.

Relatively few Oklahoma's Promise students are disqualified for failure to comply with the conduct requirements. Of the over 8,300 students in the 2017 high school graduating class, about forty (0.5%) were disqualified only on the basis of noncompliance with one or more of the three conduct requirements.

Eliminating Award Payment for Remedial Courses: SB 529 of the 2017 legislative session included the requirement that, beginning with the 2018-2019 academic year, the program will no longer pay for noncredit remedial courses.

## CONTACT PERSON:

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

### 610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions throughout the remainder of their school years or educational program:

(1) Attend school regularly and to do homework regularly, meaning the student was in attendance at least eighty percent (80%) of each school year, excluding absences excused by the school;

(2) Refrain from substance abuse, meaning the student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law for an offense involving a controlled dangerous substance, as defined by 63 O.S. § 2-101(8);

(3) Refrain from commission of crimes or delinquent acts, meaning the student was not adjudicated delinquent as a juvenile nor convicted of a crime as an adult by a court of law;

(4) Have school work and school records reviewed by mentors designated pursuant to the program;

(5) Provide information requested by the Oklahoma State Regents for Higher Education [OSRHE] or the State Board of Education; and

(6) Participate in program activities. [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) Assist the student in achieving compliance with the agreements;

(2) Confer, when requested to do so, with the school contact person, other school personnel, and program mentors;

(3) Provide information requested by the OSRHE or the State Board of Education; and

(4) Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships. [70 O.S. § 2605]

(c) Students in the program graduating high school in 2010 and thereafter must complete the following 17-unit core curriculum with a minimum 2.50 grade-point-average (GPA) on a 4.00 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcribed with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation.

(1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);

(2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, pre-calculus, statistics and probability [must have completed geometry and Algebra II], calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture);

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) One additional unit, or year, of subjects listed above, or any Advanced Placement course except AP

courses in applied fine arts (art history and music theory will count; studio art courses will not count);

- (7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.
- (d) The program curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the program curricular requirements.
- (e) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.
- (f) Strict parameters regulate the substitution of applied courses (OSRHE policy on Institutional Admission and Retention).
- (g) Exceptions to the required core curriculum will be considered according to the following:
  - (1) Students attending schools, or homeschool students participating in other educational programs, which do not offer all the core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:
    - (A) Core curriculum requirements which are also required for regular college admission (OSRHE policy on Institutional Admission and Retention) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.
    - (B) Any other core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.
  - (2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.
  - (3) Any other requests for exceptions to the core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for program benefits; provided, such approval may require the satisfaction of any core curriculum requirements omitted in high school or other educational program.
- (h) Students must attain a minimum 2.50 cumulative GPA on a 4.00 grading scale for all work attempted in grades nine through twelve.
- (i) Homeschool students and students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT and SAT test scores reported on an official test report issued by ACT from tests administered on national test dates prior to the student's high school graduation will be considered. Scores from ACT residual tests will not be considered. SAT test scores will be considered in a manner comparable to ACT test scores.

**610:25-23-7. Payment of awards; policies and limitations**

- (a) Eligible students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident nonguaranteed tuition paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];
- (b) Eligible students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund in an amount equivalent to the average undergraduate resident nonguaranteed tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;
- (c) Eligible students enrolled in a postsecondary career technology program that meets the requirements to be eligible for federal student financial aid and is offered by a technology center school supervised by the State Board of Career and Technology Education through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education shall have an award equivalent to tuition paid, not exceeding the average amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;
- (d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;
- (e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;
- (f) Beginning with students graduating high school in 2017-2018 and thereafter, payment will be limited to 129 semester credit hours, or the equivalent, except as provided in the following. Students enrolled in a baccalaureate degree program that requires in excess of 129 semester credit hours or the equivalent, may receive payment for the number of semester credit hours required by the degree program. Students without a baccalaureate degree who are enrolled in a first professional degree program that does not require completion of a baccalaureate degree and that requires in excess of 129 semester credit hours or the equivalent, may receive payment for the number of semester credit hours required by the degree program up to a maximum of 150 semester credit hours or the equivalent. The Chancellor may approve exceptions to the limit for extraordinary or hardship circumstances including, but not limited to, sickness and injury.
- (g) Students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than five (5) years after the student's first semester of postsecondary

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enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military service, or service required by the student's religious or cultural traditions;

(h) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(i) Students who have previously received awards shall have priority over students applying for initial awards;

(j) The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards [70 O.S. § 2604]. Award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

(k) Beginning with the 2018-2019 academic year, an award shall not include payment for non-credit remedial courses.

(l) If a student withdraws from a class in which he or she has received an award from the Oklahoma Higher Learning Access Program, the awarded funds shall be returned to the Oklahoma Higher Learning Access Program. This provision shall only apply to awarded funds when the student withdraws prior to the end of the add/drop period for the session in which the student is enrolled.

### **610:25-23-8. Administrative responsibilities**

The Oklahoma Higher Learning Access Act established administrative roles and responsibilities for the Oklahoma State Regents for Higher Education (OSRHE) and the State Board of Education.

(1) Every public school district shall designate at least one contact person at each Oklahoma public school site in which eighth, ninth- or tenth-grade classes are taught. When requested by the OSRHE, the State Board of Education shall assist the OSRHE to ensure the designation of contact persons. Private schools shall also designate at least one school official as a contact person. For students who are educated by other means, a parent or guardian or other person approved by the OSRHE shall be designated as the contact person. [70 O.S. § 2605]

(A) The contact person shall be responsible for processing student applications for the program according to the rules and regulations established by the OSRHE.

(B) The contact person shall maintain the agreements, which shall be executed on forms provided by the OSRHE.

(C) The local contact person shall:

(i) monitor the student's compliance with the terms of the agreement;

(ii) document transfer out of state, death, and other conditions; and

(iii) report on circumstances of noncompliance to the OSRHE.

~~(D) Compliance with the program requirements for attending school regularly, refraining from substance abuse, and refraining from criminal or delinquent acts shall be determined according to the local school district's policy.~~ Compliance or noncompliance with the program requirements for attending school regularly [610:25-23-4(a)(1)], refraining from substance abuse [610:25-23-4(a)(2)], and refraining from criminal or delinquent acts [610:25-23-4(a)(3)] shall be reported to the OSRHE by the local school district.

(E) The local district contact person shall report program participants who transfer into or out of the district to the OSRHE and identify the local education agency (LEA) and site from which or to which the student transferred.

(F) Beginning in April of the student's year of graduation, the local contact person shall gather from the program participants and his/her records, information which substantiates whether or not the program requirements have been met.

(G) The student's program verification form should be completed, signed, dated, and forwarded to the OSRHE as soon after the student's graduation as possible.

(2) The local school district where an Oklahoma Higher Learning Access Program student is attending when the student begins participation in the program and any subsequent school district where the student attends shall forward information regarding the student's participation in the program to a school to which the student transfers upon the school's request for the student's records. [70 O.S. § 2605]

(3) The Oklahoma State Regents for Higher Education shall:

(A) designate personnel to coordinate tracking of program records for the years when students participating in the program are still in the public schools, provide staff development for contact persons in the public schools, and provide liaison with the State Board of Education and local organizations and individuals participating in the program [70 O.S. § 2605];

(B) coordinate and develop policies and procedures to implement the Oklahoma Higher Learning Access Act;

(C) coordinate the publication and distribution of program awareness information and materials;

(i) Each school year, every fifth- through ninth-grade student in the public and private schools of Oklahoma and students educated by other means who are in the equivalent of the fifth through ninth grade shall be apprised, together with his/her parents, custodial parent, or guardian, of the student's opportunity for access to higher

learning under the Oklahoma Higher Learning Access Program [70 O.S. § 2605];

(ii) The OSRHE and the State Board of Education shall develop, promote, and coordinate a public awareness program to be utilized in making students and parents aware of the program [70 O.S. § 2605];

(D) coordinate the provision of technical assistance to local school districts and individual participants;

(E) administer the Oklahoma Higher Learning Access Trust Fund;

(F) process applications submitted directly to the OSRHE;

(G) determine final eligibility for the program award.

[OAR Docket #19-549; filed 6-5-19]

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #19-556]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Administrative Components of the Department
- 612:1-3-2. The Director of Rehabilitation Services [AMENDED]
- 612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]
- 612:1-3-8.1. Executive officers [AMENDED]
- 612:1-3-10. Final signature authority [AMENDED]
- Subchapter 17. Availability of Information, Scope and Description of Open Meetings
- 612:1-17-1. Access to DRS records [AMENDED]

**AUTHORITY:**

Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.2

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 3, 2018

**COMMENT PERIOD:**

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March 11, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 11, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Revisions to Chapter 1 consist of adding and updating management job titles. Removal of antiquated language related to accessing DRS records.

**CONTACT PERSON:**

Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Process Improvement Unit, 3535 N.W. 58<sup>th</sup> Street, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. ADMINISTRATIVE COMPONENTS OF THE DEPARTMENT**

**612:1-3-2. The Director of Rehabilitation Services**

(a) The Director of Rehabilitation Services, as the chief administrative and executive officer of the Department of Rehabilitation Services (DRS), is charged with the responsibility for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Director is overseen by the Commission for Rehabilitation Services.

(b) The Director directly supervises the Chief of Staff, the Chief Fiscal Officer, the Chief Operations Officer, the Communications Director, ~~and the External Relations Officer,~~ Division Administrators for Vocational Rehabilitation, Visual Services, Disability Determination, and the Superintendents of the School for the Blind and School for the Deaf.

(c) The Director's duties include:

- (1) assuring that all of DRS is working toward its mission and the goals established by the Commission through aggressive implementation of the planning and budgeting system;
- (2) serving as staff to the Commission for Rehabilitation Services, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;
- (3) serving as ex officio member to the Rehabilitation Advisory Council, and ~~consultant~~ to the Independent Living Council;
- (4) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;
- (5) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;
- (6) serving as the chief spokesperson for DRS and as an advocate for the clients it serves;
- (7) assuring the coordination of services with other state agencies; and,
- (8) selecting staff capable of carrying out the DRS mission for the areas immediately under the Director's supervision, establishing job descriptions and specifications for each of those positions, delegating authority to complete duties assigned and overseeing the accomplishment of those assigned responsibilities

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### 612:1-3-2.1. The Chief of Staff of Rehabilitation Services

(a) The Chief of Staff of Rehabilitation Services assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

(b) To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff supervises the Division Administrators for Vocational Rehabilitation Services, Visual Services, Disability Determination, ~~Financial Services Division, Management Services~~, and the Superintendents of the School for the Blind and the School for the Deaf. To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff also supervises the Communications Director and External Relations Officer, the Chief Operations Officer and the Chief Fiscal Officer.

(c) The Chief of Staff duties include:

- (1) assuring that all of DRS is working toward its mission and the goals established by the Commission and the Director through aggressive implementation of the planning and budgeting system;
- (2) serving as staff to the Commission for Rehabilitation Services at the direction of, or in the absence of, the Director, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;
- (3) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;
- (4) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;
- (5) serving as a spokesperson for DRS and as an advocate for the clients it serves;
- (6) assuring the coordination of services with other state agencies; and,
- (7) carrying out such other duties and assignments the Director, or in the Director's absence, the Commission deems necessary and prudent to attain the mission of DRS; delegating authority to complete duties assigned, and overseeing the accomplishment of those assigned responsibilities.

### 612:1-3-8.1. Executive officers

The executive officers in (1) through (4) report directly to the Department of Rehabilitation Services Director.

(1) **Chief of Staff.** The Chief of Staff assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services.

In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

(2) **Chief Fiscal Officer.** The Chief Fiscal Officer is responsible for the direction and oversight of the Department's fiscal operations, including finance, general and federal accounting, budgeting, administration and control of financial information systems, and reporting activities.

(3) **External Relations Officer.** The External Relations Officer coordinates The Department's legislative initiatives and monitors legislative actions affecting the Department.

(4) **Communications Director.** The Communications Director coordinates the dissemination of public information about DRS. This is accomplished through news releases, a Department newsletter, publications in appropriate media formats, and other public relations activities. The Communications Office is also responsible for producing the Department's annual report.

(5) **Chief Operations Officer.** The Chief Operations Officer provides leadership and oversight to internal functioning of the department and providing infrastructure support to the agency programs to include contracting and purchasing, property management, human resources, liaison with information technology and other support services to the agency.

### 612:1-3-10. Final signature authority

The Department of Rehabilitation Services recognizes the importance of efficient processing of resource and operations approval requests. At the same time, the Department must assure sufficient oversight of resource allocation in order to fulfill its obligations as a steward of public funds. The Department has therefore established a signature authority listing to delineate final approval levels for resource and operations approval requests. With regard to signature authority on contracts, all expenditures must be consistent with DRS's budget categories as approved by the Commission. Delegation of final signature authority is limited to the next lower administrative level unless approved in writing by the Director. The administrator is to notify the appropriate administrative programs of delegations. Administrators have authority to approve actions within their areas of responsibility at all administrative levels below their own. The requests listed in (1) through (9) of this Subsection must continue to be reviewed and approved by the appropriate staff before presentation to the individual with final signature authority. There are additional resource and operations approvals unique to each administrative area that are stated in the policies established for that administrative area.

(1) **Director's signature.** The Director has final signature authority for items listed in (A) through (E) of this Paragraph.

- (A) Sole source contracts.
- (B) Initial contracts for \$250,000 or more.
- (C) Notices of personnel action (may be delegated).
- (D) Leave without pay requests for 90 days or more.

- (E) Other actions as required by executive order, statute, etc.
- (2) **Chief of Staff.** The Chief of Staff has final signature authority for items listed in (A) through (C) of this Paragraph.
  - (A) Initial contracts between \$100,000 and \$250,000 on a case by case basis and upon written authority of the Director.
  - (B) Initial contracts or interagency agreements which obligate the entire Department or more than one division.
  - (C) New brochures, forms, publications (electronic or printed), and videos produced for more than one division.
  - (D) Policy Transmittals by the Administrator for Policy Development and Programs Standards.
- (3) **Division Administrator.** Division Administrators have final signature authority for items listed in (A) through (K) of this Paragraph.
  - (A) Initial contracts for less than \$100,000.
  - (B) New or revised interagency agreements involving the division.
  - (C) Administrative purchases costing \$10,000 or more (may be delegated). Computer purchases must be co-signed by the Administrator for Information Services.
  - (D) Requests for employee in-state travel (may be delegated).
  - (E) Requests for out-of-state employee travel.
  - (F) Final decisions for employee grievance resolution, other than discrimination complaints, and for adverse action after review by Human Resources.
  - (G) Leave without pay requests for less than 90 days.
  - (H) Brochures, forms, publications (electronic or printed), and videos produced for the division.
  - (I) Requests for internships or practicums for respective division.
  - (J) Memos for general distribution to the division.
  - (K) Grant proposals.
- (4) ~~Executive and MSD Administrators~~**Chief Operations Officer.** ~~Executive and MSD Administrators~~**Chief Operations Officer** ~~have~~ has final signature authority for items listed in (A) through (F) of this Paragraph.
  - (A) Office supply orders.
  - (B) Reorder of existing printed materials.
  - (C) ~~MSD Unit administrative~~Administrative purchase requisitions under area of responsibility up to ~~\$10,000~~\$100,000. Computer purchases must be co-signed by the Administrator for Information Services.
  - (D) Administrative memos under area of responsibility.
  - ~~(E) Policy Transmittals by the Administrator for Policy Development and Programs Standards.~~
  - ~~(F)~~ Requests for employee in-state travel.
- (5) **Field Coordinators and Program Managers in DVR and DVS.** The Field Coordinators or Program

- Managers in Vocational Rehabilitation Services and Visual Services Divisions have final signature authority for administrative purchases up to \$10,000. Computer purchases must be co-signed by the Administrator for Information Services. Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.
  - (A) Office supply requisitions other than those available on the electronic ordering system.
  - (B) Reorder of existing printed materials Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.
- ~~(6) Program Managers in DVS. Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.~~
  - ~~(A) Office supply requisitions other than those available on the electronic ordering system.~~
  - ~~(B) Reorder of existing printed materials.~~
- ~~(7) Superintendents at OSB and OSD.~~ Superintendents have final signature authority for items listed in (A) through (J) of this Paragraph for the respective school.
  - (A) Initial contracts for less than \$100,000.
  - (B) Interagency agreements involving only the school.
  - (C) All administrative and educational purchases. Computer purchases must be co-signed by the Administrator for Information Services.
  - (D) Requests for all employee travel.
  - (E) Final decisions for adverse action after review by Human Resources.
  - (F) Final decisions for grievance resolutions, other than discrimination complaints.
  - (G) Leave without pay requests for less than 90 days.
  - (H) Requests for internships or practicums.
  - (I) Brochures, forms, publications (electronic or printed), and videos produced for the school.
  - (J) Grant proposals.
- ~~(8) Supervisors at OSB and OSD.~~ Supervisors at OSB and OSD have final signature authority for items in (A) through (B) of this Paragraph for the respective school.
  - (A) Office supply orders.
  - (B) Reorder of existing printed materials.
- ~~(9) Program Managers, Disability Determination Division.~~ Program Managers at the Disability Determination Division have final signature authority for the following items in (A) through (B) of this Paragraph.
  - (A) The Program Manager responsible for budgets, contracts, and purchases approves administrative purchases under \$10,000. Computer purchases must be co-signed by the Administrator for Information Services.
  - (B) Reorder of existing printed materials.

**SUBCHAPTER 17. AVAILABILITY OF INFORMATION, SCOPE AND DESCRIPTION OF OPEN MEETINGS**

## Permanent Final Adoptions

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### 612:1-17-1. Access to DRS records

(a) **Rights.** The Oklahoma Open Records Act is codified in 51 O.S. 24A.1 through 24A.18. In general the purpose of this Act is to ensure and facilitate the public's right of access to, review and copying of governmental records. The scope of the records to be maintained is expanded under the Act to include completed records of all business and financial transactions. The description of records to be maintained specifically includes books, photographs, microfilm, computer tapes or disks, video records, or "other material regardless of physical form or characteristic".

~~(b) **Information not subject to release.** This Act does not apply to records specifically required by law, both Federal and State, to be kept confidential. In addition to restrictions on release of information protected by rules, records not to be disclosed include: records subject to privileges such as attorney client and physician patient; personal notes prepared for one's own use in making a decision or recommendation, except such material relating to budget requests prior to taking action; propriety information relating to bids prior to publication or opening, computer programs and software, appraisal for awarding contracts prior to the award; the prospective locations of private businesses if disclosure would give an unfair advantage (unless the location is otherwise part of a public record such as license application); personal communications with a public official in the exercise of Constitutional rights (to the extent necessary to protect the person's identity); student records except for director information; documents provided by Federal agencies which are subject to limitations on disclosure; and information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent, or copyright the research or any other proprietary rights in the research or the results of the research. The Act provides that personnel records may be kept confidential if they relate to a personnel investigation/disciplinary action or release would be a clearly unwarranted invasion of privacy.~~

~~(c) **Exception.** "Record" does not mean non governmental personal effects, unless public disclosure is required by other laws or regulations, personal financial statements submitted to a public body for the purpose of obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body.~~

~~(d) **Information subject to release.** Personnel records that are public include the application of a person who becomes an employee, gross receipt of public funds, dates of employment, title or position, and final disciplinary action. All other records not falling within the descriptions given in Subsection (b) of this Section, regardless of physical form, are releasable under the Open Records Act. It is possible that records will contain material that is both open and confidential. As an example, a client's records could have medical information from the Veterans Administration. When this occurs, care should be taken to remove the confidential material.~~

~~(e) **Access to records.** Access to records shall not be denied because another division or public official is using or has taken possession of such records for investigatory purposes or has placed the records in an investigation file.~~

~~(f) **Inquiries.** Persons requesting the review of copies of records are to submit the request in writing. The written request must include: a description of the requested records; how the records are to be used, such as in the public interest, news media, research, commercial purposes, etc.; and the requestor's name and address.~~

~~(g) **Fee exclusions and fees.** Provisions for copying and search fees are contained in the statute, with these exceptions being noted: no copy fee is charged to other public entities, to applicants, recipients or their representatives, or employees or former employees seeking information from their case file or employment records; and no search fee is charged to news media, schools, authors, or "taxpayers seeking to determine whether those entrusted with the affairs of its government are honestly, faithfully, and competently performing their duties as public servants." The fees listed in (1) - (4) of this Subsection may stand alone or be charged in combination. For example, a person may be charged a search fee in addition to a fee for photocopying.~~

~~(1) **Fees for photocopying.** The Department has established a fee schedule for documents having the dimensions of 8 1/2 x 14 inches or smaller; if less than 10 pages, 25 cents per page, between 10 and 100 pages, 10 cents per page, and over 100 pages, 5 cents per page, or a maximum of one dollar (\$1.00) per copied page for a certified copy.~~

~~(2) **Fees for search.** Requests that are for a commercial purpose or clearly would cause excessive disruption of office function will be charged a search fee of \$25.00 per hour for staff time spent in the search.~~

~~(3) **Fees for other types of reproduction.** Requests for computer runs, microfilming or reproduction other than photocopying, will be charged at the cost to the Department of duplicating the information involved. Such requests are to be forwarded to the State Office where the fee will be developed with the appropriate division.~~

~~(4) **Payment of fees.** All fees are paid prior to delivering the copies, and if the request is for search only, the fee is paid before the person is allowed to review the material. All fees are paid by check or money order; cash is not accepted. The fee payment is transmitted to the State Office, Attention Financial Services Division. In addition, a receipt is to be given upon payment. A copy of the manual material is maintained to explain the fee schedules to interested persons.~~

~~(h) **Penalties and appeals.** As indicated, the law generally requires the production and copying of records. A person may file suit or appeal to obtain records. Also, an employee is subject to a criminal action and disciplinary action for "willfully" withholding information that should not have been withheld. On the other hand, no damages may be awarded for release of information. Clearly, the law favors release. If a person wishes to appeal a denial of access to records, within ten days of such denial a letter may be submitted to: Director of Rehabilitation Services, Open Records Act Appeal, 3535 N.W. 58th Street, Suite 500, Oklahoma City, Oklahoma 73112.~~

[OAR Docket #19-556; filed 6-6-19]

**TITLE 612. STATE DEPARTMENT OF  
REHABILITATION SERVICES  
CHAPTER 10. VOCATIONAL  
REHABILITATION AND VISUAL SERVICES**

*[OAR Docket #19-557]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Client Participation in Cost of Services
  - 612:10-3-5. Basic living requirements [AMENDED]
- Subchapter 7. Vocational Rehabilitation and Visual Services
  - Part 1. Scope of Vocational Rehabilitation and Visual Services
    - 612:10-7-2. Field staff responsibilities [AMENDED]
    - 612:10-7-2.1. Applications for employees or family member(s) of employees [NEW]
    - 612:10-7-2.2. Applications for friends or family member(s) of friends [NEW]
    - 612:10-7-2.3. Services for employers [NEW]
    - 612:10-7-2.4. Annual outreach and review services [NEW]
  - 612:10-7-3. Client responsibilities [AMENDED]
- Part 3. Case Processing Requirements
  - 612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
- Part 5. Case Status and Classification System
  - 612:10-7-56. Employment [AMENDED]
  - 612:10-7-58. Closed Rehabilitated [AMENDED]
- Part 9. Actions Requiring Review and Approval
  - 612:10-7-87. Actions requiring supervisor's approval [AMENDED]
- Part 13. Supportive Services
  - 612:10-7-130. Maintenance [AMENDED]
- Part 15. Training
  - 612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]
- Part 25. Transition from School to Work Program
  - 612:10-7-240. Overview of transition from school to work services [NEW]
  - 612:10-7-241. Subminimum wage for youth with disabilities [NEW]
  - 612:10-7-242. Pre-employment transition services [NEW]
  - 612:10-7-244. Overview of transition from school to work services [REVOKED]
- Subchapter 9. Rehabilitation Teaching Services
  - Part 5. Services
    - 612:10-9-38. Vocational rehabilitation [AMENDED]

**AUTHORITY:**

Commission for Rehabilitation Services; 56 O.S. § 199.1-2; 74 O.S. § 166.1 et seq.; 34 CFR 361; 34 CFR 361.36; 34 CFR 361.42; 34 CFR 361.48; 34 CFR 361.48(b); 34 CFR 361.5; 34 CFR 361.5(c)(15); 34 CFR 361.5(c)(29) and (30); 34 CFR 361.54; 29 USC 701 et seq; 29 USC 705; 29 USC 705(11); 29 USC 709(c); 29 USC 720(a)(2); 29 USC 722(a); 29 USC 722(a)(2)(B); 29 USC 722(b)(4)(A); 29 USC 723(a)

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 3, 2018

**COMMENT PERIOD:**

December 3, 2018 through February 6, 2019

**PUBLIC HEARING:**

February 4-6, 2019

**ADOPTION:**

March 11, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 11, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Revisions to Chapter 10 consist of rules being implemented to be compliant with WIOA. Updated and removed antiquated language. Basic living requirements revised to lower the family income level above which a VR client will be required to participate in the cost of services. 612:10-7-244 Overview of transition from school to work services is being revoked. This rule was moved and renumbered to 612:10-240.

**CONTACT PERSON:**

Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Process Improvement Unit, 3535 N.W. 58<sup>th</sup> Street, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES**

**612:10-3-5. Basic living requirements**

(a) A basic living requirement has been established for different size family groups. A family member is an individual who is a relative or guardian of an applicant or eligible individual. Basic living requirements are based on ~~300%~~200% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial status of a client. To qualify as independent from the family group, the client must meet one of the following criteria:

- (1) Beneficiary of Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI);
- (2) At least 24 years of age and single;
- (3) A ward of the court and in custody of DHS;
- (4) Married and maintaining a separate household;
- (5) Meets the criteria for temporary housing as described in 612:10-3-5(c) or;
- (6) The counselor verifies the client has the financial resources to demonstrate self-sufficiency and the client declares no family contributions are available.

(b) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this rule. Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.

(c) An eligible individual whose disability has resulted in the need to live with family or friends, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.

**SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES**

# Permanent Final Adoptions

## PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VISUAL SERVICES

### 612:10-7-2. Field staff responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or DVS. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program.

(c) The counselor's primary vocational rehabilitation service is counseling and guidance with job placement. Additional services must be justified as necessary to compensate for, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and DVS case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

- (1) service cost;
- (2) available service providers;
- (3) service accessibility;
- (4) expected duration of services;
- (5) consumer satisfaction with the services in question, to the extent that such information is available;
- (6) qualifications of potential service providers;
- (7) the types of services offered by the potential service providers;
- (8) the degree to which services are provided in integrated settings; and
- (9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and DVS. Cross reference 612:10-7-3

(h) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

~~(i) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality. The technician must also disclose to the counselor any relationship with the applicant that might create a conflict of interest. The counselor will then contact the Program Manager to see if the case can be worked without partiality or transferred to another counselor.~~

### 612:10-7-2.1. Applications for employees or family member(s) of employees

(a) In order to provide fair and equal access to vocational rehabilitation services, and to avoid the appearance of impropriety or conflict of interest, an applicant who is a DRS employee or an immediate family member of a DRS employee, shall adhere to the procedures below when such an individual wishes to apply for rehabilitation services. Immediate family members may include a spouse, children, or any other individual who might be considered immediate family.

(b) The employee shall advise the Field Services Coordinator of the intent to apply for services. If the Field Services Coordinator, his/her immediate family member, his/her direct report, or an immediate family member of his/her direct report intends to apply for services, the employee shall advise the appropriate Division Administrator of the intent to apply for services.

(c) The Field Services Coordinator or Division Administrator (when appropriate) will select a counselor to take the application. Whenever possible, the counselor will be located in an adjacent unit.

## **612:10-7-2.2. Applications for friends or family member(s) of friends**

In order to provide fair and equal access to vocational rehabilitation services, and to avoid the appearance of impropriety or conflict of interest, the following procedure will be followed. If an applicant is familiar to the point of friendship or an immediate family member of an individual who is familiar to the point of friendship, an application/referral will not be processed by the impacted DRS staff member. The relationship will be disclosed to the Supervisor in writing for proper case assignment.

## **612:10-7-2.3. Services for employers**

DRS's focus is to inform businesses about the benefits and opportunities associated with a workforce that is diverse and inclusive, and support business to develop that workforce. DRS values employer input into the VR program. DRS and workforce partners engage in activities that include employer input on workforce topics. Within the core services to business, DRS contributes by:

- (1) Informing businesses about the DRS talent pool and the full offerings of DRS programs, services, and incentives.
- (2) Informing employers about opportunities to provide work-based learning and career exploration options to students and youth through internships, on the job work experiences, and pre-employment transition services.
- (3) Enabling employers to recruit, job match, hire, train, and retain qualified talent from the DRS talent pool.
- (4) Connecting employers to community resources that support individuals with disabilities.
- (5) Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive technology, and accessibility.
- (6) Providing information and consultation regarding employment of people with disabilities, including the benefits/return on investment of enhancing diversity in the workplace, disability awareness, and the Americans with Disabilities Act.
  - (A) Assist employers in identifying and preparing individuals with disabilities to fill job vacancies through on the job training.
  - (B) Informing employers about available tax incentives for hiring qualified persons with disabilities.
  - (C) Assist employers with identifying and setting up Apprenticeship opportunities for persons with disabilities.

## **612:10-7-2.4. Annual outreach and review services**

(a) DRS will provide this service by DRS qualified staff or under a contractual relationship. DRS is required to provide annual outreach and review services for individuals earning subminimum wages under a 14c certificate. DRS is responsible for providing the required services only when an individual becomes known to DRS. The individuals will receive information about career counseling, supported employment,

customized employment, career advancement, benefits counseling, and referrals to DRS and other available job placement resources within their local communities.

(b) For individuals hired at subminimum wage, these services must be carried out once every six months for the first year of the individual's subminimum wage employment, and annually thereafter for the duration of such employment. Intervals will be calculated based upon the date an individual becomes known to DRS. An individual may become known to DRS via self-identification by the person with a disability, via referral by a third party, through the individual's involvement with the vocational rehabilitation process, or any other method.

(c) Individuals will receive documentation as soon as possible, but no later than 45 days after services are completed, or 90 calendar days if additional time is necessary due to extenuating circumstances, which should be interpreted narrowly. At a minimum, documentation must include:

- (1) Name of the individual with a disability;
- (2) Description of service or activity completed;
- (3) Name of the provider of the required service or activity;
- (4) Date required service or activity completed;
- (5) Signature of DRS personnel transmitting documentation to the individual with a disability; and
- (6) Date and method by which document was transmitted to the individual.

## **612:10-7-3. Client responsibilities**

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through (12) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

- (1) Provide information and be available to complete the assessment process to find out if you are eligible for services.
- (2) Be on time and keep appointments with DVR/DVS staff, doctors and others. Call in advance or as soon as possible, if you cannot come to an appointment.
- (3) Follow the advice of doctors and other medical professionals to include compliance with all prescribed medications.
- (4) Participate with your DVR/DVS counselor in developing the Individualized Plan for Employment, (IPE) including participating in assessments needed to determine your needs and strengths.
- (5) Provide enrollment documents to home/supervisor counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued, if your IPE includes educational and training services.
- (6) Attend education or training classes on a regular basis and make at least passing grades, if your IPE includes these services.

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- (7) Review your IPE with your counselor at least once a year and participate in making revisions to the plan when needed.
- (8) Maintain satisfactory progress toward completing the IPE.
- (9) Abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS) and/or other appropriate agencies for purposes of seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.
- (10) Keep the appropriate professional informed of changes in the individual's address, financial status, or other program-related changes.
- (11) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.
- (12) Work with the counselor to obtain or keep suitable gainful employment or appropriate independent living outcomes as services are being completed.

### PART 3. CASE PROCESSING REQUIREMENTS

#### 612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services

- (a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:
  - (1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;
  - (2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
  - (3) can benefit in terms of an employment outcome from vocational rehabilitation services.
- (b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.
- (c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:
  - (1) considered to have a significant disability under the order of selection; and
  - (2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.
- (d) Eligibility requirements shall be applied without regard to:
  - (1) duration of residence in the state,
  - (2) type of disability,
  - (3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.
  - (4) gender, race, color or national origin,
  - (5) type of expected employment outcome,
  - (6) source of referral, or
  - (7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.
- (e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:
  - (1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.
  - (2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.
- (f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services to advance in or retain employment, or when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.
- (g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.
- (h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.
  - (1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a qualified professional. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.

(2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below, as performed by a qualified audiologist or other qualified professional as determined by the Department. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. Diabetes management training will be incorporated into the IPE unless the client shows that he/she has previously completed diabetes management training. When recommended by a physician, diabetes management training will be incorporated into the IPE regardless of past diabetes education received by the individual.

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** An individual may be identified as learning disabled:

(A) When there is a marked discrepancy between verbal and performance intellectual level or

(B) When the individual's achievement on individually administered, standardized tests in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM, current edition).

(7) **Mental Disorders.** Individuals may be eligible for vocational rehabilitation services based on a mental health diagnosis made by a qualified professional (612:10-7-98 (17)(A)(1-5)). Documentation must be filed from a qualified professional indicating the client is participating in a treatment plan and in compliance with all medication as prescribed. Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Intellectual Disability.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the

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school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol 10 and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** Any of the following conditions may provide a basis for eligibility due to visual disability:

(A) **Blindness.** A central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.

(B) **Visual impairment.** A central visual acuity of 20/60 or less in the better eye with best correction, or other visual condition which, for the individual, results in functional limitations and constitutes a barrier to employment. Other visual conditions which may result in functional limitations include, but are not limited to, limited peripheral vision, extreme light sensitivity, loss of depth perception, loss of stereopsis, diplopia (double vision), aphakia, total absence of color discrimination or red-green deficiency, blurred vision, eye muscle and movement conditions, and cortical visual impairment.

(C) **Progressive eye disease.** Diagnosis of a progressive sight threatening disease or condition that has resulted in functional limitations for the individual or is expected to progress rapidly. Progressive eye diseases which may result in significant vision loss include, but are not limited to, retinitis pigmentosa, diabetic retinopathy, glaucoma and macular degeneration.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

### 612:10-7-56. Employment

(a) **Use of Employment status.** A case is placed in this status when the client begins employment. The client must be followed in employment for a minimum of 90 days prior to being closed to ensure the adequacy of the employment in relation to the needs and limitations of the client.

(b) **Supported employment.** Cases are placed into employment status after the requirements have been met for completion of the "Stabilization" Milestone, and the client is ready to begin the final milestone, "Successful Rehabilitation". During this milestone, the provider must continue ongoing supports for a minimum of 90 days before the case can be closed.

(c) **Employment and Retention.** Cases are placed into employment status when the individual has completed the fifth day of work ("Job Placement" Milestone), or after completion of "Four Weeks Job Support" Milestone if short term job coach training or support is needed. The client must be followed in employment for a minimum of 90 days prior to being closed.

(d) **Case recording requirements.** After the client has entered employment, it is the client's responsibility to provide the counselor with employment and salary information. When an individual is placed in employed status, case recording will document:

- (1) Beginning date of employment;
- (2) Name and address of the employer;
- (3) Client's wages or salary;
- (4) Suitability of the employment; and
- (5) How the job was obtained. If the information is obtained from a source other than the client, the source of the information will be identified.

(e) **Documentation at placement.** A copy of the pay stub identifying the individual's start date, hours worked per week, and competitive hourly wage. If the pay stub is not available, then the following is acceptable:

(1) An individual's written report of employment information and required wage information when it is documented on an authorized DRS form (DRS-C-065) with their dated signature; or

(2) A detailed case note identifying the individual's employment information including the start date, hours per week, and competitive hourly wage that is based on the counselor's conversation with the actual employer. Prior to calling an employer, the individual shall be informed that information provided and gathered is limited to what is necessary to document and verify employment. This provides the individual the opportunity to discuss preferences and options for obtaining required documentation. A signed Release of Information should be in the case file.

(3) If verification as stated above is not forthcoming and all efforts to obtain acceptable verification are documented, then the following is acceptable: a detailed case note identifying the individual's employment information including the start date, hours per week, and competitive hourly wage that include the date employment verification was received with justification for the individual not providing formal documentation.

## PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

(ef) **Contact.** When a client is placed in employed status, contact is maintained and documented until it is determined the employment is satisfactory and the case can be closed. This determination that the employment outcome is satisfactory will be made with the full participation of the client.

**612:10-7-58. Closed Rehabilitated**

(a) **Use of Closed Rehabilitated status.** A case is closed as rehabilitated because the client has achieved an employment outcome as a result of vocational rehabilitation services. Cases closed as rehabilitated must as a minimum meet the requirements in (1) through (5) of this Subsection:

- (1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;
- (2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- (3) the employment outcome is in an integrated setting, consistent with the individual's informed choice;
- (4) the individual has maintained the employment outcome for a period of at least 90 days; and
- (5) at the end of the appropriate period under Paragraph (4) of this Section, the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(b) **Out of state.** Clients who move out of state after services have been completed are closed in rehabilitated status if the requirements in Subsection (a) of this Section can be met. If those requirements cannot be met the case will be closed, not rehabilitated.

(c) **Successful closure prior to completion of IPE.** If employment is secured before completion of the IPE, a counselor must document the conditions of substantial services and suitable employment were met. If planned services are interrupted prior to achieving the originally planned vocational goal, and services provided have directly contributed to the employment outcome for the individual or to job retention, an IPE amendment is not needed to revise the vocational goal prior to closure. A plan amendment is required when there is a substantial deviation from the original employment goal.

(d) **Cases closed from supported employment.** An individual with the most significant disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for a minimum of 90 days beyond stabilization. In addition to the criteria for "suitably employed", the counselor must document that the individual has met or has made substantial progress toward meeting the weekly work goal defined in the IPE, the client is satisfied with the job, the employer is satisfied with the client's job performance, extended services are in place, all supported employment requirements have been met, and the case is ready for closure. The closure documentation will address any significant differences in the ultimate work week achieved as compared with the predicted goal.

(e) **Cases closed from employment and retention.** An individual with severe disabilities who is receiving employment

and retention services is considered to be successfully rehabilitated when the client maintains employment for a minimum of 90 days after placement, or for a minimum of 4 weeks plus 90 days if the individual required the "4 Weeks Job Support" Milestone.

(f) **Case recording requirements.** The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held within 30 days of the closure, and will be documented in a case narrative. The client will be notified in writing of the closure and advised of the availability of Post-Employment Services.

(g) **Documentation at successful closure.** Prior to closure, a copy of the current pay stub identifying the individual's competitive hourly wage and hours to determine weekly earnings. If the current pay stub is not available, then the following is acceptable:

(1) An individual's written report of employment information and required wage information documented on an authorized DRS form (DRS-C-065) with their dated signature; or

(2) A detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week that is based on the counselor's conversation with the actual employer. Prior to calling an employer, the individual shall be informed that information provided and gathered is limited to what is necessary to document and verify employment. This provides the individual the opportunity to discuss preferences and options for obtaining required documentation. A signed Release of Information should be in the case file.

(3) If verification as stated above is not forthcoming and all efforts to obtain acceptable verification are documented, then the following is acceptable: a detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week, the date the final employment verification was received with justification for the individual not providing formal documentation.

(4) Individuals who are self-employed are required to provide wage documentation of competitive integrated self-employment.

**PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL**

**612:10-7-87. Actions requiring supervisor's approval**

Actions requiring supervisory approval include:

- (1) All actions of a newly employed counselor/teacher.
- (2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed \$25,000.
- (3) All case closures in which an IPE was developed and the case was placed into service status or beyond services initiated.

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- (4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).
- (5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.
- (6) Small Business plans with a cost to the agency in excess of \$10,000.00.
- (7) Vehicle or home modifications over the DCAM authority order limit and housing modifications involving structural modifications.
- (8) Vehicle repairs that exceed \$1,000.00 for the life of a case.
- (9) Dental services with a projected cost over \$5,000.00.

### PART 13. SUPPORTIVE SERVICES

#### **612:10-7-130. Maintenance**

(a) **General guidelines.** Maintenance is a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Maintenance, including payments, may not exceed the cost of documented expenses to the individual resulting from service provision. Authorizations for maintenance will not be issued to pay the cost, or part of the cost, for any other service or expense.

(b) **Provision of maintenance.** To receive maintenance, an individual must be either an eligible DVR or DVS client or an applicant for vocational rehabilitation services undergoing diagnostic evaluation and testing. For an accepted client, maintenance must be a supportive service related to outcomes listed in the Individualized Plan for Employment. The costs of the maintenance may not exceed the amount of increased expenses that the IPE causes for the individual or his/her family. The provision of maintenance as a supportive service is not synonymous with general assistance payments. It is not intended to pay for those living costs that exist irrespective of the individual's status as a DVR and DVS client. Maintenance payments must be carefully tied to the achievement of specific VR outcomes which must be stated and documented in the case record and the IPE to justify such payments. Maintenance cannot substitute for or supplement income assistance payments.

- (1) **Maintenance for diagnostic and evaluation services.** Maintenance payments for individuals receiving diagnostic or evaluation services may be authorized for overnight care, short-term lodging and/or meals.
- (2) **Maintenance for physical restoration services.** Maintenance for physical restoration services is paid to the client until he/she is able to work. The client must be in his/her own home and the covered period of convalescence is to be 60 days or less. For convalescent periods in excess of 60 days, the counselor will refer the client to other sources for assistance (public assistance, SSI). In no

instance will medical maintenance be paid while the client is hospitalized.

(3) **Maintenance for training.** Maintenance can be authorized for full time vocational school students or college students. Maintenance can be authorized for a client granted an exception to the full-time attendance requirement under 612:10-7-150(a). DRS will not pay for assistance with room and board expenses if there is a state funded vocational school, college or university within 40 miles of the client's official residence. In addition, DRS will only sponsor room and board expenses related to on-campus housing options with the lowest cost. Exceptions to this policy may be granted due to issues such as disability requirements. All exceptions must be approved by the Programs Manager and thorough justification must be documented in the case.

(4) **Maintenance for job search services.** Maintenance for job search services requires an IPE with major services directed toward the goal of employment.

(5) **Maintenance for job relocation.** Maintenance may be paid to a client for assistance in relocating to a new job site. Maintenance services for this purpose must be identified on the IPE.

(c) **Clothing expenses.** Clothing and/or uniforms can be purchased when needed to begin training or enter employment. Everyday clothing needs of the client are considered as part of the basic living requirements. Any clothing purchased for the client must be:

- (1) required by the training facility;
- (2) necessary to participate in job search or begin employment; or
- (3) necessary to begin a training program that requires clothing standards beyond the client's means.

(d) **Day care expenses.** Day care expenses will be paid for from DVR and DVS funds only when necessary to participate in the IPE, and it is fully documented that no other resources are available for this service, including family members and friends.

### PART 15. TRAINING

#### **612:10-7-152. Payment of tuition and fees at colleges and universities**

(a) **Public institutions of higher learning.** Tuition and fees for DVR and DVS clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and DVS will pay those fees charged to all students and special fees associated with required courses in the student's major field of study. ~~After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.~~

(b) For the first 60 credit hours or during the completion of an Associate's degree, DRS will only sponsor up to the cost of tuition and fees charged by the local state funded community college or state university within 40 miles of the client's official place of residence. If the client chooses to attend a different training site, DRS will only sponsor an amount equivalent to the amount that would be sponsored if attending the local college/university. Additional transportation or maintenance costs related to attending another training site will not be sponsored by DRS.

(c) For the completion of a Bachelor's degree, DRS will only sponsor up to the cost of tuition and fees charged by the state funded college or university closest to the client's official place of residence that offers a program to reach the vocational objective. Additional transportation or maintenance costs related to attending another training site will not be sponsored by DRS.

(d) Exceptions to the policies for college/university training must be approved by the Programs Manager through justification and must be documented in the case. Possible exceptions include but are not limited to:

(1) The need to attend a school outside of the 40 mile limit is due to disability related factors such as the need for accessible on-campus housing.

(2) The degree major approved by the DRS Counselor for the client is not available at the local college or university.

(e) After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(f) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state-supported colleges or universities of equal rank. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(g) **Federal/State student aid.** Pell Grant and all other Federal/State aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to the consideration of the expenditure of DRS funds regardless of whether the student is attending a public or private institution of higher education.

(h) **Cost documentation.** Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

**PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM**

**612:10-7-240. Overview of transition from school to work services**

(a) Transition services is a coordinated set of activities for a student that promotes movement from the public schools to post-school activities. The Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act use the same language to describe transition services and their purpose. No break in required rehabilitation services will occur for eligible students exiting the secondary school when a case has been opened while in high school. The transition process is outcome based, leading to post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and/or community participation consistent with the informed choice of the individual. The goal of the Transition from School to Work Program is to help eligible individuals with disabilities make the transition from school to work in order to function as a productive member of society.

(b) The Transition from School to Work Program is implemented through a cooperative agreement between DRS and each participating local secondary school district, private school, charter school, home school organization and Career and Technology Education Center, through an MOU with the State Department of Education. The Transition Coordinator in DRS State Office acts as the liaison with the State Department of Education, and provides statewide coordination and technical assistance for the Transition from School to Work Program.

(c) Transition services must be based on the individual student's needs, taking into account the student's preferences and interests. Transition planning will include, to the extent needed, services in the areas of:

(1) instruction;

(2) community services;

(3) employment and other post-school adult living objectives, including job skill training available through vocational-technical schools;

(4) acquisition of daily living skills and a functional vocational evaluation;

(5) supported employment services can be initiated during the final graduating semester of high school; and

(6) other needs specific to the individual.

(d) The Transition from School to Work Program is based upon effective and cooperative working relationships between the Special Education Section of the State Department of Education, the Department of Rehabilitation Services, and the Local Educational Agency. Each agency retains responsibility for providing or purchasing any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency [34 CFR 300.520].

**612:10-7-241. Subminimum wage for youth with disabilities**

DRS must provide documentation in collaboration with the local school district of specific services to youth ages 14-24 if those individuals are known by DRS to be seeking subminimum wage work. This documentation must be provided as soon as possible but no later than 45 days after services are

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completed, or 90 calendar days, if additional time is necessary due to extenuating circumstances which should be interpreted narrowly. The documentation must include the following:

- (1) Pre-Employment Transition Services provided by the school and/or DRS as applicable;
- (2) Application for DRS where they are found eligible or ineligible;
- (3) Youth had an approved IPE with a competitive integrated employment goal;
- (4) Youth with a disability was unable to achieve the employment outcome specified in their IPE and has a closed case with DRS;
- (5) Youth received career counseling, and information and referrals from DRS to other Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports to enable the individual to explore, discover, experience, and attain competitive integrated employment.

### **612:10-7-242. Pre-employment transition services**

(a) **Students with a Disability.** Vocational Rehabilitation (VR) must collaborate with local educational agencies (LEAs) to provide, or arrange for the provision of, Pre-employment Transition Services (Pre-ETS) for all students with a disability in need of such services.

- (1) A "Student with a Disability" as defined in Oklahoma is ages 16 through 21 and eligible for and receiving special education or related services under an Individualized Education Program (IEP); or an individual with a disability for purposes of Section 504 (individual does not need to have a 504 plan to meet the definition requirements).
- (2) An individual as young as 14 years old may be considered a "Student with a Disability" if Pre-ETS is determined necessary by the IEP team.
- (3) The definition of "Student with a Disability" applies to all students enrolled in educational programs, including postsecondary education programs or other recognized education programs, so long as they satisfy the age requirements. The definition is inclusive of secondary students who are homeschooled, as well as students in other non-traditional secondary educational programs.

(b) **Required Activities.** Services may be provided to students, or groups of students, with disabilities who are eligible or potentially eligible for VR services in the following areas:

- (1) Job exploration counseling.
- (2) Work-based learning experiences, which may include in-school or after school opportunities or experience outside the traditional school setting, including internships, that is provided in an integrated environment to the maximum extent possible.
- (3) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education.
- (4) Workplace readiness training to develop social skills and independent living.
- (5) Instruction in self-advocacy, including instruction in person-centered planning, which may include peer

mentoring, including peer mentoring from individuals with disabilities working in competitive integrated employment.

(c) **Delivery of Services.** Pre-ETS may be delivered in collaboration with school districts/LEAs via any combination of:

- (1) Vocational rehabilitation counselors
- (2) The vocational rehabilitation counselor will coordinate Pre-ETS with other entities who maybe delivering these services.
- (3) Other entities contracted with VR such as:
  - (A) Community Rehabilitation Programs
  - (B) Independent Living Centers

(d) **Considerations under 00S.** VR must continue to provide Pre-ETS to students with disabilities who were receiving such services prior to being determined eligible for VS and are placed in a closed category.

(e) **Pre-Employment Transition Coordination.**

- (1) District office staff will be responsible for attending IEP meetings for students with disabilities when invited; using conference calls and video conferences, when necessary;
- (2) working with local workforce development boards, job centers and employers to develop work opportunities for students with disabilities, including apprenticeships, internships, summer employment and other employment opportunities available throughout the school year;
- (3) working with schools to coordinate and ensure the provision of Pre-ETS; and
- (4) attending person-centered planning meetings for individuals with developmental disabilities receiving SSI-D/Medicaid when invited.

### **612:10-7-244. Overview of transition from school to work services [REVOKED]**

(a) ~~Transition services is a coordinated set of activities for a student that promotes movement from the public schools to post-school activities. The Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act use the same language to describe transition services and their purpose. No break in required rehabilitation services will occur for eligible students exiting the secondary school when a case has been opened while in high school. The transition process is outcome based, leading to post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and/or community participation consistent with the informed choice of the individual. The goal of the Transition from School to Work Program is to help eligible individuals with disabilities make the transition from school to work in order to function as a productive member of society.~~

(b) ~~The Transition from School to Work Program is implemented through a cooperative agreement between DRS and each participating local secondary school district, private school, charter school, home school organization and Career and Technology Education Center, through an MOU with the State Department of Education. The Transition Coordinator in DRS State Office acts as the liaison with the State Department of Education, and provides statewide coordination and~~

technical assistance for the Transition from School to Work Program.

(c) Transition services must be based on the individual student's needs, taking into account the student's preferences and interests. Transition planning will include, to the extent needed, services in the areas of:

- (1) instruction;
(2) community services;
(3) employment and other post-school adult living objectives, including job skill training available through vocational technical schools;
(4) acquisition of daily living skills and a functional vocational evaluation;
(5) supported employment services can be initiated during the final graduating semester of high school; and
(6) other needs specific to the individual.

(d) The Transition from School to Work Program is based upon effective and cooperative working relationships between the Special Education Section of the State Department of Education, the Department of Rehabilitation Services, and the Local Educational Agency. Each agency retains responsibility for providing or purchasing any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency [34 CFR 300.520].

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 5. SERVICES

612:10-9-38. Vocational rehabilitation

The consumer can receive the services of the Instructional Services program while being served through the Vocational Rehabilitation counseling program. The staff member will provide comprehensive instructional services necessary for the consumer to meet the employment goal.

(1) Referral from rehabilitation counselor. Consumers who are legally blind or severely visually impaired receiving services through a rehabilitation counselor will be referred for Rehabilitation Teaching and Orientation & Mobility (O & M) services. Through the diagnosis and evaluation process the staff member gathers information to aid in determining needs for instructional services.

(2) Rehabilitation teaching services in joint cases. Important services provided by the teacher include evaluation and training in areas related to employment which include but are not limited to consumer and family adjustment to blindness, competence in communication, job readiness skills, personal management, home management, and basic orientation to immediate surroundings to facilitate safe mobility at home and work.

(3) Orientation and Mobility referral for joint cases. Important services provided by the O & M Specialist include, but are not limited to, evaluation and training for safe travel in the workplace, cane travel, preparation for dog guide, and local transportation usage.

(4) Joint service status. When it is determined a consumer can benefit from both instructional and counseling services the instructional staff and counselor, through consultation with each other and the consumer, will each develop a program of services. During the provision of services, the counselor and instructional staff will share pertinent information including narrative recording, through regular contact and case staffing. The formation of the instructional service plan should include objectives and services to be provided.

(5) Closing joint cases. When preparing a joint case for closure, the rehabilitation instructional staff and counselor will consult one another to determine readiness for closure.

[OAR Docket #19-557; filed 6-6-19]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-558]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Public Policy
Part 11. Public Records
710:1-3-71 [AMENDED]
710:1-3-72 [AMENDED]
Part 13. Other Policy Provisions
710:1-3-80 [AMENDED]
Subchapter 5. Practice and Procedure
Part 3. Description of Administrative Review and Hearings
710:1-5-14 [NEW]
Part 8. Settlement of Tax Liability
710:1-5-86 [AMENDED]
710:1-5-88 [AMENDED]
710:1-5-89 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203 and 219.1

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n/a

GIST/ANALYSIS:

Section 710:1-3-80 has been amended to clarify existing policy regarding procedures for partial release of a tax warrant or lien. [68:214]

# Permanent Final Adoptions

New Section 710:1-5-14.1 has been added to clarify the Tax Commission's statutory authority to pursue criminal prosecution in appropriate cases. [68:105]

Sections 710:1-5-86 and 710:1-5-88 have been amended consistent with the passage of HB 3156 which increased the effective minimum amounts necessary for district court approval of an agreement entered into between a taxpayer and the Commission to settle or compromise any controversy relating to taxes collectible by the Commission. [68:219,219.1]

Sections 710:1-3-71, 710:1-3-72 and 710:65-1-5-89 have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, and ensure accurate internal cross-references.

## CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 3. PUBLIC POLICY

### PART 11. PUBLIC RECORDS

#### 710:1-3-71. Rules of the Oklahoma Tax Commission

(a) **Rules described.** "Rules" of the Oklahoma Tax Commission are formal statements of policy which set out procedures to be followed in the administration of various tax levies and fees. Rules describe broad interpretations of the tax laws, often prescribe forms, and may set out informal and formal procedures for filing, remitting, registering and objecting to the various taxing provisions. Rules may also prescribe procedures for the granting, denial, suspension, renewal, or revocation of various permits and licenses administered by the Commission. Rules are subject to the provisions of Article I of the Oklahoma Administrative Procedures Act (APA), in Title 75 of the Oklahoma Statutes ~~O.S. §§ 250-308.2~~, and must be promulgated under the terms of the APA before they are considered effective. Rules which have been promulgated have the full force and effect of law and continue in effect until amended or revoked under APA provisions.

(b) **Availability.** Current ~~Rules~~ rules, both permanent and emergency, of the Oklahoma Tax Commission are available on the Oklahoma Tax Commission website at [www.tax.ok.gov](http://www.tax.ok.gov) or from Taxpayer Assistance Division, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours.

#### 710:1-3-72. Decisions of the Oklahoma Tax Commission

(a) **Decision defined.** A "decision" of the Oklahoma Tax Commission means a final determination in an adversarial hearing on an individual tax protest or claim, including a Commission order in writing which is made, entered, and mailed to a taxpayer pursuant to the provisions of the Uniform Tax Procedure Code (68 O.S. § 201, et seq.). Decisions initially

rendered from individual tax hearings are considered confidential records. However, decisions from individual tax hearings are available to the public under the grant of authority set out in 68 O.S. § 221(~~e~~) and the mandate of Section 302(A)(4) of Title 75 of the Oklahoma Statutes (Administrative Procedures Act).

(b) **Confidentiality.** To protect the identity of individuals, the ~~Decisions~~ decisions of the Oklahoma Tax Commission available for examination by the public utilize fictitious names or have had names and identifying features removed, leaving intact the factual statement, the statement of applicable law, the findings of the Commission, and the disposition of the protest or claim.

(c) **Applicability.** Decisions of the Oklahoma Tax Commission may be broadly categorized into two groups: Precedential and Non-precedential. A Precedential decision is one in which the findings are applicable to a broad spectrum of taxpayers and in which the interpretation of law embodied in the holding may appropriately be relied upon prospectively by the Commission and by the public. A ~~non-precedential~~ Non-precedential decision is generally one in which the rule of law expressed is unique to the fact situation of the particular case.

(d) **Availability.** Decisions are available from the Administrative Proceedings Section, 3700 North Classen Boulevard, Suite 260, Oklahoma City, Oklahoma, during normal business hours and may be accessed through the Tax Commission website at <http://www.oktax.state.ok.us> ~~www~~ [www.tax.ok.gov](http://www.tax.ok.gov).

### PART 13. OTHER POLICY PROVISIONS

#### 710:1-3-80. Procedures for partial release of tax warrant or lien

(a) Partial Release of a Tax Warrant or Lien may be issued under the following circumstances:

(1) ~~Whenever the application and evidence in support thereof shows:~~

(A) ~~That for the legal reasons described in paragraphs (2), (3) or (4) of this subsection, there exists no likelihood of collection or enforceability of a Tax Warrant against a particular parcel of realty;~~

(B) ~~That the denial of the Partial Release would result in an undue expense or hardship on the requesting party; and~~

(C) ~~That the request for the Partial Release has been made by the entity which meets a requirement in paragraph (2), (3) or (4) of this subsection; Where there is a short sale and the lien of an outstanding Tax Warrant is unenforceable or uncollectible due to the existence of a prior lien(s) held on the parcel of realty, and the amount of the outstanding prior lien(s) exceeds the amount such property would bring at a sale of the property for fair market value;~~

(2) Where the lien of an outstanding Tax Warrant is unenforceable or uncollectible due to the existence of a prior outstanding mortgage lien(s) held by the requesting party on the parcel of realty, and the amount of the outstanding mortgage lien(s) exceeds the amount such property would bring at a foreclosure sale;

(3) ~~Where the a mortgage lien(s) as described in paragraph (2) of this subsection~~ has been foreclosed in an action in a District Court but where there has been a failure to name the State of Oklahoma ex rel, Oklahoma Tax Commission as a party defendant in the foreclosure action and there exists no likelihood of collection or enforceability of a Tax Warrant against a particular parcel of realty;

~~or~~  
(4) ~~Where the holder of such a mortgage lien(s) as described in paragraph (2) of this subsection~~ has taken a deed in lieu of foreclosure, and there exists no likelihood of collection or enforceability of a Tax Warrant against a particular parcel of realty;

(5) Where the applicant is not the taxpayer named in the Tax Warrant and acquired a parcel of realty encumbered by an Oklahoma Tax Commission tax lien, whether it be at a County Tax Resale or any other situation where title was passed from the taxpayer named in the Tax Warrant to the applicant without properly extinguishing the Tax Warrant;

(6) Where there exists no likelihood of collection or enforceability of a Tax Warrant against a particular parcel of realty because the applicant does not have enough equity in the property to satisfy the Tax Warrant in full; or

(7) Where the denial of the Partial Release would result in an undue expense or hardship on the requesting party.

(b) For purposes of this Section, under the situations described in ~~subsection (a) of this Section~~, "**adequate consideration**" for a Partial Release is defined as follows:

(1) ~~Payment~~In a situation described in (a)(1), (a)(2) or (a)(3) of this Section, payment of ten percent (10%) of the Tax Warrant inclusive of interest and penalty, provided such an amount is not less than Five Hundred Dollars (\$500.00).

(2) In a situation described in (a)(4) of this Section, payment of the principal tax liability on the Tax Warrant, provided such an amount is not less than Five Hundred Dollars (\$500.00).

(3) In a situation described in (a)(5) of this Section, payment of all of the net proceeds from the sale.

(4) Pursuant to 68 O.S. Section 214, a Tax Warrant may be released without the payment of any consideration only when the Tax Commission determines that the warrant, certificate or judgment is clouding the title of such property by reason of error in the description of properties or similarity of names.

(5) ~~Notwithstanding paragraph (1) of this subsection,~~In any case where the Commission shall determine that the amount prescribed by paragraph (1) through (4) of this subsection shall be either excessive or inadequate, then adequate consideration shall be such amount as the Commission shall prescribe.

**SUBCHAPTER 5. PRACTICE AND PROCEDURE**

**PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS**

**710:1-5-14. Criminal tax prosecution and referral**

The Tax Commission has the authority to pursue criminal prosecution in appropriate cases pursuant to the provisions of 68 O.S. § 105. The General Counsel or the district attorney is required to initiate criminal actions for violations of the tax laws of this state. *The attorneys for the Tax Commission may prosecute such criminal actions or may, upon request of a district attorney, appear and assist in the prosecution of such actions initiated by the district attorney.* 68 O.S. § 105(B). *As used herein, the term "tax laws of this state" means any law of the State of Oklahoma which levies, imposes, provides for administration of, or in any way relates to a tax, fee, or revenue raising property which is collected by or required to be deposited with the Commission.* 68 O.S. § 105(C).

**PART 8. SETTLEMENT OF TAX LIABILITY**

**710:1-5-86. Review by Commission**

(a) **Unanimous vote required.** A unanimous vote of the members of the Commission is required for approval of a Settlement Agreement.

(b) **Discretionary act.** The determination of settlement is within the sole discretion of the Commission.

(c) **Facts and other considerations.** In making its decision, the Commission will consider, but not be limited to, the following matters:

- (1) The likelihood of collection of the debt;
- (2) The amount of the debt;
- (3) Efforts made by the ~~applicant~~Applicant to pay a part of the debt prior to filing an application for settlement;
- (4) The taxpaying record of the ~~applicant~~Applicant;
- (5) Applicant's current and possible future earning capacity;
- (6) The portion of the tax itself which would be paid under the terms of the proposed Settlement Agreement;
- (7) The composition of the balance of tax, penalty, and interest due;
- (8) The percentage of the tax debt proposed to be settled;
- (9) The Applicant's age and health;
- (10) The Applicant's net worth;
- (11) The acceptance by the Internal Revenue Service of an Offer in Compromise and the amount;
- (12) The age of the debt;
- (13) The existence of liens;
- (14) Current operating status of any business;
- (15) Bankruptcy status;
- (16) The amount determined to be collectible. This amount is generally based upon the Commission's evaluation of the reasonable collection potential of the taxpayer's assets and revenue. The collectible amount is one factor used to determine if an offer is reasonable.
- (17) Other liable parties;
- (18) Whether tax debt due is a trust tax collected by Applicant but not remitted to the Commission;
- (19) What other persons are liable,

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- (20) Whether the Applicant is located within Oklahoma or not;
- (21) The accuracy and veracity of the Applicant's representations to the Commission;
- (22) The recommendations of the Account Maintenance Division; and
- (23) The expense and time expended in future collection efforts by the Commission on the Applicant's debt.
- (d) **Other circumstances which may be considered.** In addition to the factors set out in (c) of this Section, the Commission may consider any other aggravating or mitigating circumstances contributing to the request for settlement, including, but not limited to:
- (1) Good faith efforts made by taxpayer to comply with the tax laws of this state.
  - (2) Benefit received by taxpayer from nonpayment of the tax.
  - (3) Involvement of taxpayer in economic activity which gave rise to tax liability.
- (e) **No appeal of denial.** The decision by the Commission to decline a proposed Settlement Agreement is final and is not appealable.
- (f) **Court approval required.** If the amount of the tax liability to be abated exceeds ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), the Settlement Agreement requires the approval of a judge of the district court of Oklahoma County.
- (g) **Resubmission of application.** If a taxpayer has previously submitted an application for a Settlement Agreement and that application was not accepted, the taxpayer may apply at a later date if financial conditions have changed, or to submit additional information not previously provided for review by the Commission.

### 710:1-5-88. Effect of a Settlement Agreement

- (a) **Effect of pending Settlement Agreement.**
- (1) Filing an application for settlement does not constitute the filing of a protest of a proposed assessment, or extend the time to protest a proposed assessment. Filing an application for settlement does not constitute the taking of an appeal to the Oklahoma Supreme Court, nor extend the time to take an appeal to the Supreme Court. Filing an application for settlement does not place a taxpayer in compliance for purposes of renewing a professional license.
  - (2) If taxpayer is on an existing repayment plan, the taxpayer must continue to make payments until the application for a Settlement Agreement is either accepted or denied. Payments made pursuant to an existing repayment plan will not be considered a part of the amount offered in the agreement.
  - (3) Collection activities may continue during the review process, however, the Commission may suspend its collection efforts if the interests of the State will not be compromised. If there is any indication that the taxpayer filed the settlement offer simply to delay collection of the tax or that the delay would interfere with collecting the

tax, the Commission will immediately resume collection efforts.

- (4) Interest and penalty will continue to accrue on any unpaid tax debt while the settlement is being considered.
- (b) **Effect of accepted Settlement Agreement.**
- (1) A Settlement Agreement relates to the entire liability of the taxpayer and all questions of such liability are conclusively settled thereby.
  - (2) Neither the Commission nor the taxpayer shall, upon acceptance of the proposed Settlement Agreement, be permitted to revise the agreement except by reason of the following:
    - (A) Falsification or concealment of facts or assets by the taxpayer; or
    - (B) Mutual mistake of a material fact concerning the basis for a Settlement Agreement; or
    - (C) Assets were fraudulently transferred prior to the agreement or were liquidated during the review process; or
    - (D) Taxpayer failed to comply with the terms of the agreement.
  - (3) Settlement of a civil liability does not constitute a settlement of a criminal liability concerning the tax period in question.
  - (4) Tax liens will be released only after an application for a Settlement Agreement is accepted and the amount offered is paid in full. If the amount of the tax liability to be abated exceeds ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), the taxpayer is also required to provide to the Commission a certified copy of Oklahoma County District Court approval of the Settlement Agreement before tax liens will be released.

### 710:1-5-89. Payment

- (a) No payment is required to be paid when the Settlement Agreement Application is submitted to the Commission.
- (b) Full payment of the amount offered in settlement of the tax liability must be made within thirty (30) days from date of notification that the proposed Settlement Agreement has been accepted. Payment of the accepted settlement amount by cash, cashier's check, money order, or charged to an approved credit card must be made by the payment due date indicated on the acceptance notice. [See: [https://www.ok.gov/tax/Online\\_Services/Payment\\_Options/index.html](https://www.ok.gov/tax/Online_Services/Payment_Options/index.html) or ~~Call: 1-800-2PAY-TAX~~]
- (c) Any payment made with the application will not be returned to Applicant, even if the Settlement Agreement is declined or withdrawn. The retained payment will be applied to Applicant's outstanding tax liability in accordance with Section 710:1-3-46 of this Chapter.
- (d) In appropriate circumstances, the Commission may consider proposed Settlement Agreements that provide for payments to be made over a period of time based on future income.
- (e) The Settlement Agreement becomes void if taxpayer defaults on payment under the agreement.

(f) The Settlement Agreement becomes void if the agreement was obtained by fraud or misrepresentation of a material fact.

[OAR Docket #19-558; filed 6-6-19]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 10. AD VALOREM**

[OAR Docket #19-559]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Equalization Study
- Part 3. Data Collection
- 710:10-3-36 [AMENDED]
- Subchapter 11. Reimbursements and Assistance to Counties [REVOKED]
- 710:10-11-1 [REVOKED]
- 710:10-11-2 [REVOKED]
- 710:10-11-13 [REVOKED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. §§ 203 and 2825

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**GIST/ANALYSIS:**

Section 710:10-3-36 of Subchapter 3 *Equalization Study* has been amended to bolster the accuracy of the sales edit portion of the equalization study by expanding the period of time for completion of the county sales edits and corresponding review thereof by the Ad Valorem Division. [68:2865]

Sections 710:10-11-1, 710:10-11-2 and 710:10-11-13 of Subchapter 11 *Reimbursements and Assistance to Counties* have been revoked due to outdated language relating to a program which no longer exists to assist counties in upgrading hardware and software to meet the criteria outlined in the Standards for Computer-Assisted Mass Appraisal.

**CONTACT PERSON:**

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. EQUALIZATION STUDY**

**PART 3. DATA COLLECTION**

**710:10-3-36. Time schedule for equalization study of real property**

The following time schedule applies to the equalization study of real property described in this Subchapter:

- (1) Complete all data collection by the ~~first~~third Monday in ~~August~~July.
- (2) Provide to County Assessors for examination a listing of sample data study results by the ~~second~~fourth Monday in ~~September~~August.
- (3) Examination by County Assessors for corrections and deletions and return to the Oklahoma Tax Commission by the ~~first~~third Monday in ~~October~~September.
- (4) Final listing of sample data study results to be provided to County Assessor by the ~~third~~second Monday in October.
- (5) Filing of informal protest to the findings of the equalization study shall be filed by the first Monday in November.
- (6) Review and disposition of any informal protest shall be made by the second Monday in November.
- (7) Equalization study final findings and recommendations shall be filed by the second Monday in November.
- (8) Presentation of findings and recommendations made to the Oklahoma Tax Commission by the fourth Tuesday in November.
- (9) Presentation to the State Board of Equalization on December 1st or the first working day thereafter.

**SUBCHAPTER 11. REIMBURSEMENTS AND ASSISTANCE TO COUNTIES [REVOKED]**

**710:10-11-1. Purpose [REVOKED]**

~~(a) This Subchapter establishes procedures for state assistance to counties for acquisition and maintenance of computer hardware and software, and for upgrades of existing computer systems should such funding be made available to counties by the Legislature.~~

~~(b) The provisions of this Subchapter are intended to afford counties the capability to obey the mandates of the Legislature, that visual inspection of real estate be implemented, effective January 1, 1991 and thereafter, and that computer assisted mass appraisal systems statewide also be implemented and maintained thereafter.~~

**710:10-11-2. Definitions [REVOKED]**

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

~~"Commission" means the Oklahoma Tax Commission.~~

~~"Computer assisted mass appraisal system" (CAMA) means that plan for mass appraisal, developed pursuant to 68~~

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O.S. §2820, which is a uniform system for mass appraisal designed to allow use of data gathered in the four year visual inspection cycle in order to establish the fair cash value of all taxable property in a county on an annual basis.

**"Division"** means the Ad Valorem Division of the Oklahoma Tax Commission.

**"Visual inspection program"** means the comprehensive program for the individual inspection of all taxable property which each county assessor must conduct in his or her respective county pursuant to the terms of 68 O.S. §§ 2820 and 2821.

## 710:10-11-13. Requests for review [REVOKED]

Any county aggrieved by a decision of the Commission may request review of that decision. The request for review should be timely made, should set out in detail the nature of the problem or grievance in written form, and should be directed to the Ad Valorem Division of the Oklahoma Tax Commission. The Commission may appoint hearing officers to hear testimony and render decisions on its behalf. On motion of an aggrieved county or of the Ad Valorem Division, the Commission may, in its sole discretion, hear any request for review.

[OAR Docket #19-559; filed 6-6-19]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 15. AIRCRAFT

[OAR Docket #19-560]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 2. Aircraft Dealer Licenses  
710:15-2-7 [AMENDED]  
710:15-2-8 [AMENDED]  
Subchapter 3. Registration  
Part 7. Exemptions  
710:15-3-30 [AMENDED]

**AUTHORITY:**  
Oklahoma Tax Commission; 3 O.S. § 257; 68 O.S. § 203

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## GIST/ANALYSIS:

Sections 710:15-2-7, 710:15-2-8 and 710:15-3-30 have been amended to ensure accurate internal cross-references and update statutory citations.

## CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 2. AIRCRAFT DEALER LICENSES

### 710:15-2-7. Granting of license; options available upon denial

- (a) The Tax Commission shall be the sole judge of an applicant's qualifications and may deny an application or refuse to issue an Aircraft Dealer License.
- (b) Proceedings related to the refusal to issue a license pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48 of the permanent rules of the Commission~~ 710:1-5-49, which set out general rules of Practice and Procedure before the Office of the Administrative Law Judges.

### 710:15-2-8. Cancellation, suspension, revocation of license

- (a) An Aircraft Dealer License may be cancelled by the Commission if the dealer's sales of aircraft fall below the qualifying threshold.
- (b) The Commission may revoke a license upon information that the license has been used by persons other than to whom it was issued.
- (c) The Commission may suspend, cancel, or revoke an Aircraft Dealer License, at any time, for non-compliance with the provisions of this Subchapter, with applicable Oklahoma tax statutes, or for other good cause shown.
- (d) Proceedings related to the cancellation or revocation of a license pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48 of the permanent rules of the Commission~~ 710:1-5-49, which set out general rules of Practice and Procedure before the Office of the Administrative Law Judges.

## SUBCHAPTER 3. REGISTRATION

### PART 7. EXEMPTIONS

### 710:15-3-30. Dealers and manufacturers exemption

Aircraft manufacturers and aircraft dealers are exempt from Oklahoma Aircraft Registration requirements, provided

they have obtained an exemption license or dealer license from the Commission. The fee for the exemption license for manufacturers or for dealers is \$250.00.

- (1) **Manufacturers.** Aircraft manufactured within the state (under an FAA approved type certificate) which are owned and in the physical possession of the manufacturer are exempt.
- (2) **Dealers.** Exemption from aircraft registration requirements for aircraft dealers is strictly limited to aircraft held for sale or resale. These aircraft are considered the ~~dealers~~ dealers' stock or inventory and lose the exemption status if operated or used for purposes other than demonstration or testing. Aircraft registered to persons licensed by the State as dealers, but operated for personal or business use (other than demonstration or testing flights) must be registered under the Oklahoma Aircraft Registration laws and are subject to the levy of aircraft excise tax.
- (3) **Dealer reports.** Each aircraft dealer must keep a record of the purchases and sales of each aircraft. The records must show the name and address of the seller or buyer, as the case might be, and contain a description of the aircraft. Dealers must submit the dealer report described above to the Oklahoma Tax Commission, on or before the 20th day of the month following the particular purchase or sale. [See: 3 O.S. §254; 68 O.S. § 6003(B)]

*[OAR Docket #19-560; filed 6-6-19]*

**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 20. ALCOHOL AND MIXED  
BEVERAGES**

*[OAR Docket #19-561]*

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PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 710:20-1-2 [AMENDED]
- Subchapter 3. Alcoholic Beverages
- 710:20-3-2 [AMENDED]
- 710:20-3-5 [AMENDED]
- 710:20-3-6 [AMENDED]

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**GIST/ANALYSIS:**

Sections 710:20-1-2 and 710:20-3-2 have been amended to clarify tax remittance responsibilities for alcohol excise tax.

Sections 710:20-3-5 and 710:20-3-6 have been amended to update statutory citations.

**CONTACT PERSON:**

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**710:20-1-2. Definitions**

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

**"Commission"** and **"Tax Commission"** mean the Oklahoma Tax Commission.

**"Distributor"** means and includes a manufacturer, distiller, winemaker, rectifier, bottler, importer, broker and nonresident seller of distilled spirits, cordials, specialties and all other alcoholic beverages who makes sales of such alcoholic beverages in this State or who causes such products to be shipped into this State F.O.B. manufacturer's warehouse or point from which such license holder will make shipment, whether or not such sales are consummated within or without this State.

**"Licensed distributor"** and **"Licensed wholesaler"** mean any distributor or wholesaler who holds a valid license issued by the Alcoholic Beverage Laws Enforcement (ABLE) Commission and a valid permit issued by the Oklahoma Tax Commission.

**"Month"** means calendar month, the period from the first day of the month to the last day, according to the established order of the division of time into years, months, weeks and days commonly recognized in the United States.

**"Person"** means and includes any individual, person, partnership, firm, association, corporation or other legal entity.

**"Storage of alcoholic beverages in transit"** means alcoholic beverages caused to be shipped into this state and stored in an alcoholic beverage warehouse, licensed and bonded by the Alcoholic Beverage Laws Enforcement (ABLE) Commission, as alcoholic beverages in transit.

**"Tax remitter"** means the licensed ~~distributor~~ wholesaler or any other person required to collect, report and remit the tax levied on alcoholic beverages.

**"Taxable sales"** means all sales of alcoholic beverages ~~by any licensed distributor to a licensed wholesaler, whether such sales are consummated within or without this State. All~~

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~~such sales shall be presumed to be sales of such products for distribution, use or possession within the State of Oklahoma, and the burden of proof shall be upon the licensed wholesaler to prove otherwise.~~

**"Taxpayer"** means the licensed wholesaler, retail dealer, retail dealer/manufacturer, or any other person liable to pay the excise tax levied on alcoholic beverages or the mixed beverage gross receipts tax levied on sale of alcoholic beverages by the individual drink. [See: 37A O.S. §§ 1-103, 5-101 and 5-105]

## SUBCHAPTER 3. ALCOHOLIC BEVERAGES

### 710:20-3-2. Payment or remittance of the excise tax on alcoholic beverages

(a) **Liability of wholesaler.** The excise tax levied upon the sale, distribution, use or possession of alcoholic beverages in this State shall be paid on a monthly basis by the licensed wholesaler ~~to the licensed distributor at the time of consummation of the taxable sale to the licensed wholesaler first possessing, selling, using, distributing, or in any manner dealing with alcoholic beverages in this State.~~

(b) ~~**Remittance by distributor.** The excise tax in (a) of this Section shall be remitted to the Oklahoma Tax Commission on a monthly basis by the licensed distributor upon all taxable sales of such products to licensed wholesalers made during the preceding month, whether the consideration for each such sale was money or otherwise and whether such sales were consummated within or without the State of Oklahoma.~~

(~~c~~) **Liability for tax on stored beverages.** Any licensed distributor who causes any alcoholic beverages to be shipped into this State and stored as alcoholic beverages in transit shall be liable for any tax assessed pursuant to audit of any storage facility wherein all such stored merchandise is not accounted for in the total of the shipments to licensed wholesalers in this State and the shipments out of this State.

(~~c~~) **Liability of nonresident seller, first seller, importer.** Any holder of a nonresident seller or manufacturer license in possession of any alcoholic beverages shipped or delivered into this State shall be liable for the excise tax levied upon the sale, distribution, use, or possession of alcoholic beverages, in accordance with *OAC* 710:20-3-3 and 710:20-3-4.

### 710:20-3-5. Interest on delinquent tax

If any amount of the excise tax levied on alcoholic beverages is not paid or remitted before the tax becomes delinquent, as set out in 710:20-3-4, interest, at the rate of one and one-fourth percent (1 1/4%) per month until payment or remittance, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. § 217(~~a~~)]

### 710:20-3-6. Penalty on delinquent tax

If any amount of the excise tax levied on alcoholic beverages is not paid or remitted within thirty (30) calendar days after the same became delinquent, as set out in 710:20-3-4, a penalty, at the rate of ten percent (10%) of the total amount of

such delinquent excise tax, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. § 217(~~e~~)]

[*OAR Docket #19-561; filed 6-6-19*]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 45. GROSS PRODUCTION

[*OAR Docket #19-562*]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

710:45-1-2 [AMENDED]

Subchapter 3. Payment; Remittance; Refunds

710:45-3-3 [AMENDED]

710:45-3-4 [AMENDED]

710:45-3-11 [AMENDED]

Subchapter 9. Exemptions and Exclusions

Part 1. General Provisions

710:45-9-2 [REVOKED]

Part 5. Horizontally Drilled Production Wells [REVOKED]

710:45-9-20 [REVOKED]

710:45-9-21 [REVOKED]

710:45-9-23 [REVOKED]

710:45-9-24 [REVOKED]

710:45-9-26 [REVOKED]

710:45-9-27 [REVOKED]

Part 7. Incremental Production from Enhanced Recovery Projects or

Properties [REVOKED]

710:45-9-30 [REVOKED]

710:45-9-31 [REVOKED]

710:45-9-32 [REVOKED]

710:45-9-32.1 [REVOKED]

710:45-9-33 [REVOKED]

710:45-9-34 [REVOKED]

710:45-9-35 [REVOKED]

Part 9. Production Enhancement Projects [REVOKED]

710:45-9-40 [REVOKED]

710:45-9-41 [REVOKED]

710:45-9-42 [REVOKED]

710:45-9-43 [REVOKED]

Part 11. Reestablishment of Production from an Inactive Well

[REVOKED]

710:45-9-50 [REVOKED]

710:45-9-51 [REVOKED]

710:45-9-52 [REVOKED]

710:45-9-53 [REVOKED]

Part 13. Deep Wells [REVOKED]

710:45-9-60 [REVOKED]

710:45-9-62 [REVOKED]

710:45-9-62.1 [REVOKED]

710:45-9-64 [REVOKED]

Part 15. New Discovery Wells [REVOKED]

710:45-9-70 [REVOKED]

710:45-9-71 [REVOKED]

710:45-9-72 [REVOKED]

710:45-9-73 [REVOKED]

Part 19. Production Using Three Dimensional Seismic Shoots

[REVOKED]

710:45-9-90 [REVOKED]

710:45-9-91 [REVOKED]

710:45-9-92 [REVOKED]

710:45-9-93 [REVOKED]

710:45-9-94 [REVOKED]

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Oklahoma Tax Commission; 68 O.S. §§ 203, 1001(F), 1001.3a, and 1013

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Subchapter 9 "Exemptions and Exclusions" and Section 710:45-3-11 have been amended to implement the provisions of House Bill 2377 (56th Legislature, 1st Regular Session, 2017) which changed the sunset date for the qualification of various gross production tax incentive exemptions and permanently suspended the remaining term periods for such incentives. [68:1001, 1001.3a]

Sections 710:45-1-2, 710:45-3-3 and 710:45-3-4 have been to update statutory citations.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**710:45-1-2. Definitions**

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

**"First purchaser"** means any person who purchases or is entitled to purchase any product subject to the Oklahoma Gross Production Tax from the producer or operator of a lease located in this state.

**"Gross value of the production"** means the gross proceeds realized from the first sale of such production, including the actual cash value and all premiums otherwise given to or reserved for the producer and all interest owners of such production, without any deduction for costs whatsoever.

**"Month"** means calendar month, the period from the first day of the month to the last day, according to the established order of the division of time into years, months, weeks and days commonly recognized in the United States.

**"Person"** means any person, firm, association, corporation or other legal entity. [See: 68 O.S. §~~400~~1001.2]

**SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS**

**710:45-3-3. Interest on delinquent gross production tax**

If any amount of the Gross Production Tax is not paid or remitted before the same becomes delinquent, as set out in 710:45-3-1, interest, at the rate of one and one-fourth percent (1 $\frac{1}{4}$ %) per month until payment or remittance, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. §~~217(a)~~217]

**710:45-3-4. Penalty on delinquent gross production tax**

If any amount of the Gross Production Tax is not paid or remitted within thirty (30) calendar days after the tax becomes delinquent, as set out in 710:45-3-1, a penalty, at the rate of ten percent (10%) of the total amount of the delinquent Gross Production Tax, shall be calculated and collected as part of the delinquent tax. [See: 68 O.S. §~~217(e)~~217]

**710:45-3-11. Minimum requirements for making claims for rebates, refunds, or credits**

(a) **General provisions.** Adjustments to Gross Production Taxes previously paid may be made by filing a claim for refund or by claiming credit on a subsequent return. In either case, the claim must include the information and conform to the procedures described in this Section. All claims for refund or credits taken remain subject to audit.

(b) **Rebates.** ~~Claims for rebates, authorized by 68 O.S. Sections 1001(E) through (J), and from Section 1001.3a, must be filed following the specific procedures applicable to each statutory incentive and be supported by the documentation required by statute and the applicable Tax Commission rules set out in Subchapter 9, Parts 5 through 19 of this Chapter.~~

~~(1) For claims related to horizontally drilled wells, see Part 5 of Subchapter 9.~~

~~(2) For claims related to incremental production from production enhancement projects, see Part 9 of Subchapter 9.~~

~~(3) For claims related to reestablished production from an inactive well, see Part 11 of Subchapter 9.~~

~~(4) For claims related to deep wells, see Part 13 of Subchapter 9.~~

~~(5) For claims related to new discovery wells, see Part 15 of Subchapter 9.~~

~~(6) For claims related to economically at risk oil leases, see Part 17 of Subchapter 9.~~

~~(7) For claims related to three dimensional seismic shoots, see Part 19 of Subchapter 9.~~

(e) **Frac oil exclusion.** Procedures to be followed in computing, documenting, and claiming the exclusion for frac oil used in qualified well completions may be found in Part 3 of Subchapter 9 of this Chapter.

(~~e~~) **Claims for refund.** Claims for refunds of Gross Production Tax must include the information and conform to the procedures described in this subsection.

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(1) **Claims filed within twelve months of production.** Claims for refund of gross production tax which are filed within the twelve-month period immediately following the month of production to which the claim pertains, must include:

(A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers; and,

(B) Amended reports (Type 3) for each month, county, and product code. The amended report must note the "**As Paid**" volumes, values, and taxes; followed by entries reflecting "**Should Have Paid**" volumes, values, and taxes; and page totals must accurately support the amount of the refund request.

(2) **Claims not filed within twelve months of production.** Claims for refund of gross production tax not postmarked within the twelve-month period immediately following the month of production to which the claim pertains, must include:

(A) A letter stating the reason for the request, amount requested, by Gross Production Tax and Petroleum Excise Tax, the period of time covered, and the Oklahoma Tax Commission's assigned production unit numbers;

(B) Original source documents, provided to the operator, which may include, but not be limited to: run, settlement, purchase, sales, or metered volume statements, frac affidavits, frac invoices, check stubs, worksheets, pricing bulletins, and any information necessary to verify an exemption, such as BLM lease numbers. Original and all correcting statements pursuant to the claim for refund must be submitted;

(C) Amended reports (Type 3) for each month, county, and product code, reversing the "**As Paid**" volumes, values, and taxes, then entering the "**Should Have Paid**" volumes, values, and taxes. Page totals must reflect the amount of the refund request; and,

(D) All supporting documentation required by statute or Commission rules.

(ed) **Claims for credit.** For claims pertaining to production months July 2002 and later, credits may be applied to the current month's tax liability, provided that:

(1) Amended reports (Type 3) for each month, county and product code are filed. The amended reports must note the "**As Paid**" volumes, values, and taxes; followed by entries reflecting "**Should Have Paid**" volumes, values and taxes; and page totals must accurately support the amount of the credit requested. The amended reports must be submitted along with the current production month's Gross Production Tax Report.

(2) The prior month's adjustments do not exceed the current production month's liability;

(3) Magnetic media submissions conform to established magnetic media guidelines; and,

(4) Supporting documents are retained and available for submission upon request of the Oklahoma Tax Commission.

(fe) **Exceptions and limitations.** Neither the refund procedures described ~~subsection (d) in (c) of this Section~~, nor the expedited filing procedures for claiming a credit described in ~~subsection (e)(d) of this Section~~ may be used for claiming an abatement or frac oil exclusion, nor for any claims for refund submitted by a non-remitting party.

## SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

### PART 1. GENERAL PROVISIONS

#### 710:45-9-2. Election of exemptions [REVOKED]

(a) ~~**Election of exemptions generally.** Persons entitled to exemption based upon production from qualifying oil, gas, or oil and gas wells shall be entitled only to the exemption granted pursuant to:~~

~~(1) Incremental production from enhanced recovery projects, as authorized by 68 O.S. § 1001(D) and Part 7 of this Subchapter; or,~~

~~(2) Horizontally drilled production wells, as authorized by 68 O.S. § 1001(E) and Part 5 of this Subchapter; or,~~

~~(3) Reestablished production from inactive wells, as authorized by 68 O.S. § 1001(F) and Part 11 of this Subchapter; or,~~

~~(4) Production enhancement projects, as authorized by 68 O.S. § 1001(G) and Part 9 of this Subchapter; or,~~

~~(5) Production from deep wells, as authorized by 68 O.S. § 1001(H) and Part 13 of this Subchapter; or,~~

~~(6) Production from new discovery wells, as authorized by 68 O.S. § 1001(I) and Part 15 of this Subchapter.~~

~~(7) Production from wells located within the boundaries of three dimensional seismic shoot, as authorized by 68 O.S. § 1001(J) and Part 19 of this Subchapter.~~

(b) **Special provision.** Expiration of an exemption available for production from a qualifying well pursuant to one of Subsections (a)(2) through (a)(7) of this Section does not prohibit any person from qualifying for the exemption provided for in Subsection (a)(1).

### PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS [REVOKED]

#### 710:45-9-20. Scope of Part 5 [REVOKED]

~~Exemption from the levy of gross production tax on horizontally drilled production wells set out in 68 O.S. § 1001(E) shall be determined according to the provisions of Part 5 of this Subchapter, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to law. [See: 68 O.S. § 1001(N)(1)]~~

**710:45-9-21. Definitions [REVOKED]**

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

**"Angle of deviation"** means that angle in which a well bore may deviate from the vertical.

**"Date of completion of an oil well"** means the date that the well first produces into the lease tanks through permanent well head equipment.

**"Date of completion of a gas well"** means the date that gas is capable of being delivered to a pipeline purchaser.

**"Effective date"** means that the first production must have commenced after July 1, 1995 and before July 1, 2015.

**"Horizontal displacement"** means that distance drilled into the pay zone of a formation at an angle exceeding seventy (70) degrees.

**"Horizontally drilled payout"** means the point at which gross working interest revenue from the horizontally drilled well equals the cost of drilling and completing such well. Applicable to production periods prior to July 1, 2011.

**"Horizontally drilled well"** means an oil, gas, or oil and gas well drilled or completed in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from the vertical and which laterally penetrates a minimum of one hundred and fifty (150) feet into the pay zone of the formation.

**"True vertical depth"** means that depth measured from the surface perpendicular to the surface.

**710:45-9-23. Costs allowed in computing horizontally drilled well payout [REVOKED]**

Costs allowed in computing horizontally drilled well payout shall include only the costs of drilling and completing the well and shall not include any cost incurred after the completion date. Neither shall it include lease acquisition costs, tank batteries, meters, pipelines or other external equipment. Applicable to production periods prior to July 1, 2011.

**710:45-9-24. Time periods for exemption from gross production tax levied on horizontally drilled producing wells [REVOKED]**

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well

producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to July 1, 2015, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S. § 1001(E)(1)]

**710:45-9-26. Audit requirements [REVOKED]**

The horizontal drilling and completion costs claimed shall be subject to verification through audit by the Oklahoma Tax Commission.

**710:45-9-27. Qualification procedure [REVOKED]**

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, may apply for qualification of the production from horizontally drilled wells, at the Oklahoma Corporation Commission on OCC Form 1534. In lieu of the OCC Form 1534, an OCC Form 1002A Completion Report accepted by the Commission reflecting that the well is a horizontally drilled producing well as addressed in this Part constitutes approval by the Commission of an application for qualification for the exemption.

(1) If an OCC Form 1534 is submitted to the Commission, such form shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, a copy shall be available to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

**PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES [REVOKED]**

**710:45-9-30. Scope of Part 7 [REVOKED]**

Exemption from the levy of gross production tax on incremental production attributable to the working interest owners of oil or other liquid hydrocarbons from enhanced recovery projects and properties set out in 68 O.S. § 1001(D) shall be determined according to the provisions of Part 7 of this Subchapter. [See: 68 O.S. § 1001(D)(5)]

**710:45-9-31. Definitions [REVOKED]**

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

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**"Base Production amount"** means the average monthly amount of production for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

**"Completion date"** means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

**"Enhanced recovery project costs"** means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

**"Existing tertiary enhanced recovery project"** means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a tertiary enhanced recovery project whose beginning date is prior to October 16, 1987.

**"Incremental production"** means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

**"Incremental working interest revenue"** means the gross value of the incremental production, less the royalty interest therein.

**"Monthly rate of production decline"** means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

**"New enhanced recovery project"** means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a secondary or tertiary enhanced recovery project whose beginning date is on or after October 16, 1987.

**"Project beginning date"** means the date on which the injection of liquids, gas, or other matter begins on an enhanced recovery operation.

**"Project payback or payout"** means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

**"Secondary recovery projects"** means secondary recovery projects approved or having an initial project beginning date on or after July 1, 2000 and before July 1, 2017, such that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, or shall not apply to production periods subsequent to June 30, 2017, whichever occurs first.

## 710:45-9-32. Qualification procedures [REVOKED]

The provisions of this Section establish criteria for determining if an operator of an enhanced recovery project has met the required conditions to qualify the incremental production

from such project for the exemption from the gross production tax. [See: 68 O.S. § 1001]

(1) **Administrative approval and determination; order.** An operator, seeking an exemption of incremental production from the gross production tax shall make application to the Oklahoma Corporation Commission for a determination that such project qualifies, a determination of the starting date, and of the base production amount.

(A) If the application is approved, a copy shall be forwarded to the operator.

(B) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency.

(2) **Tax Commission approval of exemption.** An operator desiring an exemption from the gross production tax shall make application by letter to the Compliance Division, Oklahoma Tax Commission. Such application shall be accompanied by:

(A) A copy of the approved application by the Corporation Commission containing a determination of the project beginning date, base production amount and project payback;

(B) The ratio of working interest/royalty interest in the well. Only the incremental production attributable to the working interest owners shall be exempted from the gross production tax. For purposes of this exemption, overriding royalty shall be included in working interest;

(C) A schedule of production, by month, of the gross amounts of crude oil or other liquid hydrocarbons produced, and the gross values thereof, from the project beginning date until the date application is made to the Tax Commission; and,

(D) OTC Forms 320A, 320C, and 320U, as are necessary, to set up the OTC Production Units, to request merge numbers, and to show the entity who will remit taxes.

## 710:45-9-32.1. Recovery of costs allowed as payback factors [REVOKED]

(a) **Enhanced recovery projects with beginning date between October 17, 1987, and June 30, 1990.** For enhanced recovery projects whose beginning dates are October 17, 1987, through June 30, 1990, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses associated with the enhanced recovery project.

(b) **Enhanced recovery project with beginning date between July 1, 1990, and June 30, 1993.** For any enhanced recovery project whose beginning date was July 1, 1990, through June 30, 1993, **allowable enhanced recovery project costs** shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. No expenditure after the completion date of such wells shall be included.

(c) ~~Secondary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2000.~~ For any secondary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, ~~allowable enhanced recovery project costs~~ shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however, that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) ~~Tertiary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2017.~~ For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2017, ~~allowable enhanced recovery project costs~~ shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses and the capital expense of pipelines constructed to transport carbon dioxide to a tertiary recovery project, provided such payback shall not exceed a period of ten (10) years from the project beginning date or July 1, 2017, whichever is sooner.

(e) ~~Excluded costs.~~ The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the "~~Council of Petroleum Accountants Society (COPAS) Accounting Procedure Form for Joint Operations~~" and "~~COPAS Bulletin No. 16~~", or subsequent revisions thereto.

**710:45-9-33. Responsibility for filing and payment of taxes [REVOKED]**

(a) ~~Responsibility for reporting; reporting; forms required.~~ The operator of a qualifying project will have primary responsibility for filing OTC Gross Production Tax Monthly Tax Report, and for remitting gross production and petroleum excise taxes on project production controlled by the operator. Working interest owners who take in kind will be responsible for filing gross production monthly tax reports, unless the take in kind owner has made an agreement with his purchaser or the operator to report and remit on his behalf. A take in kind interest owner must submit, through the project operator, a Form 320, showing the disposition of his share of production. Purchasers may report taxes on project production with the approval of the Tax Commission, provided whenever there are multiple purchasers from a project, each reporting purchaser must report his allocated share of production, incremental production, and any exempt interest. All persons remitting taxes must comply with Tax Commission security requirements.

(b) ~~Valuation of incremental production.~~ When an operator or a single purchaser files the gross production tax reports and remits taxes, the incremental production will be valued at the volume weighted average price per barrel of all crude oil or other liquid hydrocarbons produced from the project during the month. When multiple purchasers file the gross production tax reports and remit taxes, the incremental production will be valued at the volume weighted average price per barrel purchased for the month, by each purchaser individually.

(c) ~~Method of computing production, base production amount and incremental production.~~

(1) ~~Frac oil recovered must be excluded as a Code 07 exemption. Frac oil will not be counted as part of the project base production amount, nor as incremental production.~~

(2) ~~Incremental production will be deducted next as a Code 11 exemption.~~

(3) ~~Exempt interests will be deducted next, in order of exemption code, as a decimal equivalent of the amount and value of production remaining after subtraction of the frac oil and incremental production.~~

**710:45-9-34. Summary reports; due dates; final project report [REVOKED]**

(a) ~~For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, 2017, operators of exempt projects will submit to the Oklahoma Tax Commission annual summaries of project operations, on each anniversary of the project's beginning date, showing:~~

(1) ~~Original capital investment in the enhanced recovery project;~~

(2) ~~Additional investments in the enhanced recovery project;~~

(3) ~~Enhanced recovery project operating expense for previous years, when applicable;~~

(4) ~~Enhanced recovery project operating expense for the current year, when applicable;~~

(5) ~~Schedule of project production (volume and value) by year of operation;~~

(6) ~~Royalty payments, by year; and.~~

(7) ~~Computation of revenue applied to project payback.~~

(b) ~~The annual summary is to be filed with the Oklahoma Tax Commission on or before the sixtieth (60th) day following each anniversary of the project's beginning date.~~

(c) ~~A final project report must be filed within sixty (60) days of achieving project payback.~~

**710:45-9-35. Expiration of exemption for incremental production [REVOKED]**

~~For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, 2017, once the gross working interest revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the gross production tax thereon.~~

**PART 9. PRODUCTION ENHANCEMENT PROJECTS [REVOKED]**

**710:45-9-40. Scope of Part 9 [REVOKED]**

~~Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to July 1, 2017, set out in 68 O.S. §~~

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1001(G) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(N)(1).

## 710:45-9-41. Definitions [REVOKED]

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

**"Base production"** means the average monthly amount of production for the twelve month period immediately prior to the commencement of the project or the average monthly amount of production for the twelve month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

**"Effective date"** means the project beginning date for the production enhancement project.

**"Exemption period"** means a period of twenty eight (28) months from the date of first sale after completion of the production enhancement project or ending on July 1, 2017, whichever is sooner.

**"Incremental production"** means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

**"Production enhancement project"** means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any workover or recompletion, as those terms are defined in this Section, or fracturing of a producing well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, 2017, any workover or recompletion, as those terms are defined in this Section, any reentry of plugged and abandoned wellbores, or addition of well or field compression.

**"Recompletion"** means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, 2017, any downhole operation in an

existing oil well or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

**"Workover"** means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, "workover" includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, 2017, "workover" includes, but is not limited to, acidizing; reperforating; fracture treating; sand, paraffin, or scale removal or other well bore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil, gas, or oil and gas, wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like for like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

## 710:45-9-42. Qualification procedure [REVOKED]

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall apply for qualification of the production enhancement project and incremental production, at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

## 710:45-9-43. Rebates - Refund procedure [REVOKED]

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of

the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as production enhanced;
- (2) A properly completed OTC Gross Production 841/495 Refund Report; and
- (3) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

**PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL [REVOKED]**

**710:45-9-50. Scope of Part 11 [REVOKED]**

Exemption from the levy of gross production tax on the reestablishment of production from an inactive well set out in 68 O.S. § 1001(F) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(N)(1).

**710:45-9-51. Definitions [REVOKED]**

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

**"Effective date"** means the date on which the reestablishment of production has occurred.

**"Exemption period"** means a period of twenty eight (28) months from the date upon which production from an inactive well is reestablished or ending on July 1, 2017, whichever is sooner.

**"Inactive well"** means a well which can be defined pursuant to one of the following:

(A) A well which, after July 1, 1997, experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including, but not limited to, casing leaks, collapse of casing, or loss of equipment in a wellbore, or any similar event which causes cessation of production and results in a workover of the well, as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas, or oil and gas for a period of not less than two (2) years, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

(C) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before July 1, 2017, that has not produced oil, gas, or oil and gas for a period of not less than one (1) year, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission, reflecting the well's status.

**710:45-9-52. Qualification procedure [REVOKED]**

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well and production at the Oklahoma Corporation Commission on OCC Form 1534.

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(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

### 710:45-9-53. Rebates - Refund procedure [REVOKED]

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished;

(2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;

(3) A properly completed OTC Gross Production 841/495 Refund Report; and

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

### PART 13. DEEP WELLS [REVOKED]

#### 710:45-9-60. Scope of Part 13 [REVOKED]

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(N)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "depth" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty eight (28) months.

(e) **Exemption for wells spudded on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

- (1) ~~12,500 to 14,999 feet and spudded between July 1, 2002 and July 1, 2015.~~ The duration of the tax incentive for wells drilled to this depth is twenty eight (28) months.
- (2) ~~15,000 to 17,499 feet and spudded between July 1, 2002 and July 1, 2015.~~ The duration of the tax incentive for wells drilled to this depth is forty eight (48) months.
- (3) ~~17,500 feet or greater and spudded between July 1, 2002 and July 1, 2015.~~ The duration of the tax incentive for wells drilled to this depth is sixty (60) months.

**710:45-9-62. Qualification procedure [REVOKED]**

An OCC Form 1002A Completion Report accepted by the Oklahoma Corporation Commission reflecting that a well was spudded during the applicable time period and drilled to the prescribed depth appearing in OAC 165:10-21-45 constitutes approval by the Commission of an application for qualification for the exemption.

**710:45-9-62.1. Rebates - Refund procedure [REVOKED]**

(a) ~~Request to Oklahoma Tax Commission for a tax refund.~~ If the Oklahoma Corporation Commission grants the application for production periods prior to July 1, 2011, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of an application approved by the Corporation Commission certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in OAC 165:10-21-45;
- (2) A copy of an approved OTC Form 320A that shows date of first sale of production;
- (3) For production periods prior to July 1, 2009, a properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) For the production periods of July 1, 2010 through June 30, 2011, an electronically filed OTC Form 328 DR Gross Production Deferred Rebate Report.
- (5) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) ~~Documentation of required investment.~~ For production periods beginning on or after July 1, 2003 and prior to July 1, 2011, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate

owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(e) ~~Refund limited to interest owners of record and operators at time of qualifying act.~~ For production periods prior to July 1, 2011, only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) ~~Notice of changes in operator and interest owners.~~ For production periods beginning July 1, 2004 and prior to July 1, 2011, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) ~~Claim limitation.~~ No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003 and prior to July 1, 2006, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(f) ~~Method of appeal.~~ If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

**710:45-9-64. Limitation on total amount of refunds paid by the Tax Commission [REVOKED]**

(a) For all wells spudded after July 1, 2005 which are exempt from gross production tax pursuant to paragraphs (2) and (3) of subsection (e) of Section 710:45-9-60, the amount of refund paid by the Tax Commission shall be limited as follows:

- (1) For the fiscal year ending June 30, 2006, no claims for refund shall be paid;
- (2) For the fiscal year ending June 30, 2007, the total amount of refunds paid shall be equal to or less than \$17,000,000.00.
- (3) For fiscal year ending June 30, 2008, the total amount of refunds paid shall be equal to or less than \$20,000,000.00.
- (4) For fiscal year ending June 30, 2009, and each fiscal year through June 30, 2011, the total amount of refunds paid each fiscal year shall be equal to or less than \$25,000,000.00.

(b) In the event the total amount of claims for refund requested within the six month filing period July 1<sup>st</sup> through December 31<sup>st</sup>, for a fiscal year exceeds the total amount of refunds

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allowed for that fiscal year as provided for in this Section, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equal the total amount allowed for refunds.

(e) In the event the total amount of claims for refund filed within the six-month filing period July 1<sup>st</sup> through December 31<sup>st</sup>, is less than the total amount of refunds allowed for that fiscal year, the Tax Commission will pay the claims that have been filed and extend the claims filing period for three additional months immediately following the expiration of the initial six-month filing period until March 31<sup>st</sup>. If the total amount of claims for refund filed within the extended three-month filing period is greater than the remaining funds, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equals the funds remaining to pay refund claims.

## PART 15. NEW DISCOVERY WELLS [REVOKED]

### 710:45-9-70. Scope of Part 15 [REVOKED]

Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and July 1, 2015, which qualify as a new discovery well pursuant to Title 68, Section 1001(I) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(N)(1).

### 710:45-9-71. Definitions [REVOKED]

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

"**New discovery**" means production of oil, gas, or oil and gas from:

(A) A well, spudded or reentered on or after July 1, 1997, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing formation.

(B) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, 2015, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing interval of the same formation.

(C) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation, located more than one (1) mile from the nearest oil well producing from the same deeper producing formation.

(D) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, 2015, which discovers crude oil in paying quantities beneath current production in a deeper producing interval, located more than one

(1) mile from the nearest oil well producing from the same deeper producing interval.

(E) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing formation.

(F) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, 2015, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing interval.

(G) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing formation, that is more than two (2) miles from the nearest gas well producing from the same deeper producing formation.

(H) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, 2015, which discovers natural gas in paying quantities beneath current production in a deeper producing interval, that is more than two (2) miles from the nearest gas well producing from the same deeper producing interval.

### 710:45-9-72. Qualification procedure [REVOKED]

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety and together with supporting documentation, shall be submitted to the Technical Services Department of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, an approved copy shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

### 710:45-9-73. Rebates - Refund procedure [REVOKED]

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or reentered between July 1, 1995 and July 1, 2015;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) A properly completed OTC Gross Production 841/495 Refund Report; and

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

**PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOTS [REVOKED]**

**710:45-9-90. Scope of Part 19 [REVOKED]**

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of

which is commenced after July 1, 2000, and prior to July 1, 2015, located within the boundaries of a three dimensional seismic shoot and drilled based on three dimensional seismic technology, as set out in 68 O.S. § 1001(J), shall be determined according to the provisions of this Part. [See: 68 O.S. § 1001(N)(1)]

**710:45-9-91. Definitions [REVOKED]**

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

**"Three dimensional seismic shoot"** means any three dimensional geophysical or seismic exploration activity conducted and finished in the field for the purpose of drilling for, and producing oil, gas, or oil and gas from geological formations, intervals, and/or common sources of supply.

**"Three dimensional seismic technology"** means any three dimensional geophysical or seismic equipment or instruments, data processing equipment, and/or data utilized to evaluate geological formations, intervals and/or common sources of supply in connection with a three dimensional seismic shoot.

**710:45-9-92. Qualification procedure [REVOKED]**

(a) **General provisions.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, 2015, located within the boundaries of a three dimensional seismic shoot and drilled based on three dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the gross production tax. [See: 68 O.S. § 1001(J)]

(b) **Administrative approval and determination.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission for a determination that the well qualifies for such exemption, as provided in 68 O.S. § 1001(J).

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-82.3.

(3) Any data, maps and other information submitted to the OCC for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and shall be returned to the applicant or destroyed upon approval of the application.

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## 710:45-9-93. Rebates - Refund procedure [REVOKED]

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced after July 1, 2000, and prior to July 1, 2015; that it is located within the boundaries of a three dimensional seismic shoot and was drilled based on such technology; and indicating whether the seismic shoot was shot either prior to, or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas, or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes

in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

## 710:45-9-94. Applicable time periods [REVOKED]

The exemption from gross production tax levied on oil, gas or oil and gas production from a well qualified pursuant to this Part shall be applied as follows:

(1) **Eighteen (18) month exemption.** For a well where the seismic shoot was shot prior to July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of eighteen (18) months.

(2) **Twenty-eight (28) month exemption.** For a well where the seismic shoot was shot on or after July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of twenty-eight (28) months or ending on July 1, 2017, whichever is sooner.

[OAR Docket #19-562; filed 6-6-19]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #19-563]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Returns and Reports

Part 7. Other Required Reporting

710:50-3-53 [AMENDED]

710:50-3-55 [AMENDED]

Subchapter 5. Audit and Assessment

Part 3. Assessments

710:50-5-13 [AMENDED]

Subchapter 12. Treasury Offset Program

710:50-12-7 [AMENDED]

Subchapter 15. Oklahoma Taxable Income

Part 5. Other Adjustments to Income

710:50-15-50 [AMENDED]

Part 7. Credits Against Tax

710:50-15-76 [AMENDED]

710:50-15-83 [AMENDED]

710:50-15-103 [AMENDED]

710:50-15-106 [REVOKED]

710:50-15-107 [REVOKED]

710:50-15-116 [NEW]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203, 2357.47 and 2369; Oklahoma Tax Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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Subchapter 15. Oklahoma Taxable Income

Part 5. Other Adjustments to Income

710:50-15-50 [AMENDED]

Part 7. Credits Against Tax

710:50-15-76 [AMENDED]

710:50-15-103 [AMENDED]

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n/a

**GIST/ANALYSIS:**

Section 710:50-3-53 has been amended to clarify existing policy that non-resident royalty interest owners who are pass-through entities shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income. [68:2369]

Sections 710:50-15-50, 710:50-15-76 and 710:50-15-103 implement the provisions of legislative changes made by the Second Special Session of the 56<sup>th</sup> Legislature (HB1011xx, HB1034xx and HB1036xx), which capped itemized deductions, the coal income tax credit and the railroad income tax credit beginning with tax year 2018. [68:2357.11, 2357.104, 2358]

Section 710:50-15-106, an income tax credit for ethanol production, has been revoked because it was repealed effective January 1, 2014 and can no longer be claimed on an Oklahoma income tax return. [68:2357.66]

Section 710:50-15-107, an employer income tax credit for eligible wage and modification expenses for injured employees, has been revoked because it was repealed effective January 1, 2015 (eligible wage expense credit) and January 1, 2017 (modification expense credit) and can no longer be claimed on an Oklahoma income tax return. [68:2357.47]

New Section 710:50-15-116 has been added to implement the provisions of Senate Bill 1585 which creates an income tax credit for qualified employers and employees in the vehicle manufacturing industry. [68:2357.404]

Section 710:50-17-51 has been amended to clarify that foreign income deemed repatriated under IRC § 965 and global intangible low-taxed income included in taxpayer's federal taxable income under IRC § 951A will be considered dividend income for purposes of 68 O.S. § 2358(A)(4)(b).

Sections 710:50-3-55, 710:50-5-13, 710:50-12-7 and 710:50-15-83 have been amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

**SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. RETURNS AND REPORTS**

**PART 7. OTHER REQUIRED REPORTING**

**710:50-3-53. Income tax withholding - oil and gas royalties**

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is five percent (5%) with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "**remitter**" means any person who distributes revenue to royalty interest owners; "**gross royalty**" means that amount which is reported for federal income tax purposes on IRS Form 1099; "**non-resident royalty interest owner**" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "**oil**" and "**gas**" shall have the meaning as the terms are defined in 68 O.S. § 1001.2. Oil and gas royalty payments made to publicly-traded partnerships as defined by Section 7704 (b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes or its publicly-traded partnership affiliates are not subject to the withholding requirement in subsection (a).

(c) Remitters are required to file an Oklahoma Nonresident Royalty Withholding Tax Return and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

- (1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;
- (2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;
- (3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and
- (4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification

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Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

(f) If the non-resident royalty interest owner is a pass-through entity, the pass-through entity shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income.

## 710:50-3-55. Reporting the transfer or allocation of a tax credit

(a) **General provisions.** The transfer or allocation of any tax credit authorized pursuant to the provisions of Title 68 of the Oklahoma Statutes, except as otherwise provided in this Section, shall be reported to the Tax Commission.

(b) **Exceptions.** This Section shall not apply to the following tax credits:

- (1) Sales Tax Relief Credit (68 O.S. § 5011)
- (2) Low Income Property Tax Relief Credit (68 O.S. § 2907)
- (3) Earned Income Tax Credit (68 O.S. § 2357.43)
- (4) Child Care/Child Tax Credit (68 O.S. § 2357)
- (5) Credit for Taxes Paid to another State (68 O.S. § 2357)
- ~~(6) Credit for Property Taxes Paid on Tornado Damaged Residential Property (68 O.S. § 2357.29)~~

(c) **Report.** The transfer or allocation of any tax credit, on or after July 1, 2011, shall be reported to the Tax Commission (OTC Form 569) by the entity transferring or allocating the credit. Said form shall be filed on or before the twentieth day of the second month after the tax year in which an act occurs which allows the tax credit to eventually be claimed.

(d) **Transferable credits.** If the credit is transferable, the report shall state:

- (1) Name of the taxpayer and taxpayer identification number to whom the credit is transferred;
- (2) Tax type;
- (3) Amount of credit;
- (4) Statutory or other legal authority which forms the basis for the credit; and
- (5) Any other information the Tax Commission may require.

(e) **Allocable credits.** If the credit is allocated, the report shall state:

- (1) Identity of the shareholder, partner or member of the pass-through entity to whom the credit is allocated;
- (2) Taxpayer identification number of the shareholder, partner or member of the pass-through entity to whom the credit is allocated;
- (3) Whether the shareholder, partner or member of the pass-through entity to whom the credit is allocated is a pass-through entity;

- (4) Tax type;
- (5) Amount of credit;
- (6) Statutory or other legal authority which forms the basis for the credit; and
- (7) Any other information the Tax Commission may require.

(f) **Failure to file report.** If a taxpayer claims a credit on any state tax return that was not previously reported to the Tax Commission, pursuant to this Section, the Tax Commission shall disallow the credit and recompute the applicable tax liability including any penalty and interest; provided, upon the filing of the report, the credit shall be allowed.

## SUBCHAPTER 5. AUDIT AND ASSESSMENT

### PART 3. ASSESSMENTS

#### 710:50-5-13. Exceptions to statute of limitations

(a) When the Internal Revenue Service and the ~~Taxpayer~~taxpayer have consented in writing to an extension prior to the time allowed in 68 O.S. §223, the Tax Commission may assess or refund income tax, as imposed under Title 68, any time prior to the expiration of time agreed upon.

(b) The Oklahoma Tax Commission may make assessment or refund after the expiration of time allowed in 68 O.S. §223 if corrections or changes are made by the Internal Revenue Service. The taxpayer shall notify the Oklahoma Tax Commission within one (1) year after such change or correction is made by the Internal Revenue Service and the Oklahoma Tax Commission shall, within two (2) years from the date of notification by the taxpayer, make such assessment or refund, unless a waiver between the taxpayer and the Oklahoma Tax Commission has been agreed to and signed. Failure to notify the Oklahoma Tax Commission of such changes shall cause the statute of limitations to be tolled.

(c) The Commission shall have the authority to audit each and every item of taxable income, expense, credit or any other matter related to the return where such items are matters of allocation and/or apportionment between Oklahoma and some other state even if such items were not affected by revisions made by the Internal Revenue Service. Where items are not matters of allocation and/or apportionment between Oklahoma and some other state, the Commission shall be bound by the consequences of the assessment of income tax or refund of income tax made by the Internal Revenue Service after the amount of such net income has been finally ascertained.

(d) Certain claims of military personnel, under conditions described in 68 O.S. § 2358~~(D)~~~~(S)~~ may not be barred by the 3-year limitation.

(e) There is no statute of limitation for paying an established liability or for a liability on an unfiled return.

## SUBCHAPTER 12. TREASURY OFFSET PROGRAM

**710:50-12-7. Fees paid to TOP**

The State will pay a fee to TOP to cover the full cost of offsets taken. The fee will be established annually in such amount as TOP determines to be sufficient to reimburse TOP for the full cost of the offset procedure. TOP will deduct the fees from amount collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering TOP. ~~The fee for 2004 is 1% of the offset.~~

**SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME**

**PART 5. OTHER ADJUSTMENTS TO INCOME**

**710:50-15-50. Deductions**

(a) In the event federal itemized deductions are used on the federal return, federal itemized deductions must be used on the Oklahoma return. Oklahoma itemized deductions to income will be the same as federal itemized deductions, subject to the ~~limitation~~ limitations in (i) of this Section. In the event the standard deduction is used on the federal return, the Oklahoma standard deduction must be used on the Oklahoma return.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of \$1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed \$2,000.00 (if married filing separately, the larger of \$500.00 or 15% not to exceed \$1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of \$3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,000.00.

(d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of \$5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,875.00.

(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$6,375.00.

(g) For tax year 2010 through tax year 2016, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

(h) For tax year 2017 and subsequent tax years, taxpayers filing as married joint or qualifying widow will have a standard deduction for Oklahoma of \$12,700.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$6,350.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$9,350.00.

(i) Oklahoma itemized deductions to income will be the same as federal itemized deductions, subject to the following limitations:

(1) For tax year 2016 and subsequent tax years, taxpayers shall add back state and local sales or income taxes which were allowed as an itemized deduction on the federal income tax return.

(2) For tax year 2017 and subsequent tax years, state and local sales or income taxes which were not allowed as an Oklahoma itemized deduction but were required to be recaptured on the federal income tax return will not be included in Oklahoma taxable income.

(3) For tax year 2018 and subsequent tax years, Oklahoma itemized deductions may not exceed \$17,000.00 provided charitable contributions and medical expenses deductible for federal income tax purposes are excluded from the \$17,000.00 cap.

**PART 7. CREDITS AGAINST TAX**

**710:50-15-76. Oklahoma coal credits**

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased, except as provided in (h) of this Section.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and fifteen cents (\$2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008, except as provided in (h) of this Section.

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- (3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.
- (b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2021, there shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars (\$68.00) per ton.
- (1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents (\$0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Five Dollars (\$5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state, except as provided in (h) of this Section.
- (2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.
- (3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.
- (c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.
- (1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [See: 68 O.S. § 2357.11(H)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.
- (2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.
- (3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.
- (4) **Limitation of transferability.** Credits earned after December 31, 2013, shall not be transferable.
- (d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this ~~section~~Section to other buyers of the Oklahoma-mined coal.
- (e) **Carryover provisions.** Any coal credit earned prior to January 1, 2014, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability for credits earned prior to January 1, 2014.
- (f) **Refund of tax credits.** Credits earned on or after January 1, 2014, but not used, shall be refunded to the taxpayer at eighty-five percent (85%) of the face amount of the credits. If the taxpayer is a pass-through entity and does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity. The total amount of credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled.
- (g) **Tax credit moratorium.** No credit may be claimed for coal purchased, mined, produced or extracted during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for Oklahoma-mined coal for qualifying purposes purchased, mined, produced or extracted on or after July 1, 2012.
- (h) **Tax credit limitation.**
- (1) For any credits calculated pursuant to (a)(1) or (a)(2), or (b)(1) of this Section for activities occurring on or after January 1, 2016, the amount of credit allowed

shall be equal to seventy-five percent (75%) of the amount otherwise provided. [68 O.S. § 2357.11(N)]

(2) For tax years beginning on or after January 1, 2018, the total amount of credits authorized by this Section used to offset tax or paid as a refund shall be adjusted annually to limit the annual amount of credits to Five Million Dollars (\$5,000,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by this Section shall be reduced so the total amount of credits used to offset tax or paid as a refund does not exceed Five Million Dollars (\$5,000,000.00) per year.

**710:50-15-83. Limitation of credits allowed by the Oklahoma Quality Jobs Program, the Small Employer Quality Jobs Incentive Acts and the 21<sup>st</sup> Century Quality Jobs Incentive Act**

No establishment which qualifies under the terms of Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), or Section 3911 et seq. of the Oklahoma Statutes (21<sup>st</sup> Century Quality Jobs Incentive Act) and has received or is receiving incentive payments pursuant to those Acts, nor its contractors or subcontractors, shall be eligible to receive, in connection with the activity and establishment for which incentive payments have been, or are being received, the credits described as follows:

- (1) The investment credit provided for by 68 O.S. §2357.4. [See: 710:50-15-74]
- (2) The credit for investments in qualified venture capital companies provided for by 68 O.S. §2357.7. [See: 710:50-15-77 and 710:50-15-78]
- (3) ~~The credit for recycling, reuse, or ultimate destruction of controlled industrial waste or deleterious substances, provided for by 68 O.S. §2357.16. (Amended and recodified at 27A O.S. §§2-11-301 through 2-11-307.) [See: 710:50-15-75]~~
- (4) The credit for clean-burning motor vehicle fuel property, provided for by 68 O.S. §2357.22. [See: 710:50-15-81]
- (5) The credits provided pursuant to the Oklahoma Research and Development Incentives Act, 68 O.S. §§54003, 54006

**710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures**

- (a) **General provisions.** For tax years beginning after December 31, 2005 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.**

(1) The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax year 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(2) Effective for tax years beginning on or after January 1, 2016, the credit is limited to seventy-five percent (75%) of the otherwise allowable credit. [68 O.S. § 2357.104(H)]

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

(f) **Tax credit moratorium.** No credit may be claimed for qualified railroad reconstruction or replacement expenditures occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. Qualified railroad reconstruction or replacement expenditures occurring before July 1, 2010 will qualify for the tax credit

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regardless of when the Department of Transportation issues the certificate of verification of completion of the project. This credit may be claimed for tax year 2012 and subsequent tax years, for qualified railroad reconstruction or replacement expenditures on or after July 1, 2012.

(g) **Tax credit limitation.** For tax years beginning on or after January 1, 2018, the total amount of credits authorized by this Section used to offset tax shall be adjusted annually to limit the annual amount of credits to Two Million Dollars (\$2,000,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by this Section shall be reduced so the total amount of credits used to offset tax does not exceed Two Million Dollars (\$2,000,000.00) per year.

### 710:50-15-106. Credits for ethanol production [REVOKED]

(a) **General provisions.** For tax years beginning after December 31, 2003 and before January 1, 2013, there is an income tax credit for ethanol production at certain ethanol facilities.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Ethanol"** is a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume.

(2) **"Ethanol facility"** is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. The facility must be located within the state of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of an ethanol facility. Capacity must be specified as gallons of ethanol produced per year.

(c) **Basic credit.** Any ethanol facility which is in production at the rate of at least twenty five percent (25%) of its name plate design capacity for the production of ethanol, on or before December 31, 2010 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced for the first sixty (60) months provided the ethanol facility maintains an average production rate of at least twenty five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of ethanol produced expires for production after December 31, 2012.

(d) **Excess production credit.** Any ethanol facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the July 1, 2003 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2012.

(e) **Credit for production after December 31, 2012.** For production of ethanol after December 31, 2012 an ethanol facility may receive an income tax credit in the amount of seven

and one half cents (\$0.075) per gallon of ethanol before denaturing, for new production for a period not to exceed thirty six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2012, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of ethanol production at an ethanol facility during the twenty four month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three month average amount determined under this subsection during any twelve consecutive month period beginning no sooner than January 1, 2013

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the ethanol production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Ethanol Production Facilities is only allowed for ethanol that is produced at a plant at which all ethanol fermentation, distillation, and dehydration takes place. No credit will be given for ethanol produced or sold for use in the production of distilled spirits.

(2) Not more than twenty five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2012.

(3) Not more than ten million (10,000,000) gallons of ethanol produced during any twelve consecutive month period at any single ethanol facility nor more than thirty million (30,000,000) gallons produced annually at all ethanol facilities shall be eligible for credit for production after December 31, 2012. The credit for production after December 31, 2012 may only be claimed by a producer for production that occurs on or before December 31, 2015.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

(g) **Tax credit moratorium.** No credit may be claimed for any ethanol production during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for ethanol production at certain ethanol facilities produced on or after July 1, 2012.

**710:50-15-107. Eligible wage and modification expenses credits [REVOKED]**

(a) **General provisions regarding credit based on wages.** For taxable years ending before January 1, 2015, a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90 day period. Eligible wages are those that are compensable under the Workers Compensation Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty five thousand dollars (\$25,000) for any employer in a taxable year.

(1) **Definitions.** The following words and terms, when used regarding the eligible wage credit, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Eligible wages"** are gross wages paid by an employer to an employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act. The wages must be paid beginning when the employee returns to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement. Wages paid after ninety (90) days or when the employee has reached maximum medical improvement are not eligible wages.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars for any employee, and may not exceed twenty five thousand dollars (\$25,000) for any employer in a taxable year. This credit is not transferable.

(b) **General provisions for credit based on modification expenses.** For taxable years ending before January 1, 2017, a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

(1) **Definitions.** The following words and terms, when used regarding the credit based on modification expenses, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Eligible modification expenses"** are expenses incurred by an employer to modify a workplace, tools or equipment or to obtain new tools or equipment which are incurred by an employer solely to enable a specific injured employee who is injured as a result of an injury which is compensable under

the Workers' Compensation Act to return to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement, and which workplace, tools or equipment are used primarily by the injured employee.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed one thousand dollars (\$1,000) for any employee, and may not exceed ten thousand dollars (\$10,000) for any employer in a taxable year. This credit is not transferable.

(e) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for wages paid or modification expenses made on or after July 1, 2012.

**710:50-15-116. Credit for qualified employers and employees in the vehicle manufacturing industry**

(a) **General provisions.** For tax years beginning after December 31, 2018, and ending before January 1, 2026, three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the vehicle manufacturing industry:

(1) Credit for qualified employers for tuition reimbursement to qualified employees.

(2) Credit for qualified employers for compensation paid to qualified employees.

(3) Credit for qualified employees.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Qualified employee".**

(A) A qualified employee is any person newly employed in Oklahoma by a qualified employer on or after January 1, 2018. A qualified employee may include a person whose prior employment was not as a full-time engineer, or whose employment was not in the state of Oklahoma, even though employed by the same qualified employer.

(B) The qualified employee must have been awarded an undergraduate or graduate degree from a qualified program by an institution.

(C) Qualified employee may include a person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and assigned to work in vehicle manufacturing in this state.

(D) Qualified employee may include a person who was employed in vehicle manufacturing in the state of Oklahoma prior to January 1, 2018, but not as a

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full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution.

(E) Qualified employee does not include a person employed in vehicle manufacturing in this state immediately preceding employment or contracting with a qualified employer.

(F) Qualified employee does not include any person employed in vehicle manufacturing in the state of Oklahoma as a full-time engineer prior to January 1, 2018.

(2) "Vehicle manufacturing" means a private or public company first placed in operation in this state after November 1, 2018, which is engaged in the research, development, design and manufacture of motor vehicles which may be driven on the avenues of public access. For purposes of this Section, "motor vehicle" does not include buses, low-speed electric vehicles, truck-tractors or motor vehicles manufactured primarily, but not exclusively, for off-road use, such as primarily for use on a golf course.

(3) "Compensation", "institution", "qualified employer", "qualified program", and "tuition" shall be defined as in Section 2357.404 of Title 68 of the Oklahoma Statutes.

**(c) Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

**(d) Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in vehicle manufacturing if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in vehicle manufacturing if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

**(e) Credit for qualified employees.**

(1) A qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this Section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

**(f) Limitation of credit.**

(1) Effective for tax years beginning on or after January 1, 2019, no more than Three Million Dollars (\$3,000,000.00) of credits authorized by (c) and (d) of this Section may be allowed as an offset in a taxable year. The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. In the event the total tax credits authorized by (c) and (d) of this Section exceed Three Million Dollars (\$3,000,000.00) in any tax year, the Tax Commission shall permit any excess over Three Million Dollars (\$3,000,000.00), but shall factor such excess into the percentage adjustment formula for subsequent years.

(2) Effective for tax years beginning on or after January 1, 2019, no more than Two Million Dollars (\$2,000,000.00) of credits authorized by (e) of this Section may be allowed as an offset in a taxable year. The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. In the event the total tax credits authorized by (e) of this Section exceed Two Million Dollars (\$2,000,000.00) in any tax year, the Tax Commission shall permit any excess over Two Million Dollars (\$2,000,000.00), but shall factor such excess into the percentage adjustment formula for subsequent years.

## SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

**PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME**

**710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations**

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

- (i) State and Local Income Taxes,
- (ii) Foreign Income Taxes, and
- (iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980,

or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.

(A) An adjustment is required when a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income.

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is allocable, by the average of total assets. This percentage is then applied to certain expenses claimed on the return

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to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which the adjustment described in subparagraph (B) of this paragraph is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(A) For purposes of calculating Oklahoma taxable income, foreign earnings deemed repatriated pursuant to 26 U.S.C. § 965 shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(i) To the extent such income is not included in the calculation of a taxpayer's federal taxable income due to inclusion on an IRC 965 Transition Tax Statement rather than the income tax return, the income shall be included on the Oklahoma return as an addition to net taxable income.

(ii) If a taxpayer elects to make installment payments of tax pursuant to the provisions 26 U.S.C. § 965, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.

(B) For purposes of calculating Oklahoma taxable income, global intangible low-taxed income included in federal income pursuant to 26 U.S.C. § 951A shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the

Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars (\$175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

[OAR Docket #19-563; filed 6-6-19]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #19-564]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Registration and Licensing

Part 1. General Provisions

710:60-3-10 [AMENDED]

710:60-3-19 [REVOKED]

710:60-3-28 [NEW]

Part 3. Penalties

710:60-3-33 [AMENDED]

710:60-3-34 [REVOKED]

Part 5. Dealers

710:60-3-54 [AMENDED]

Part 15. Special License Plates

710:60-3-162 [AMENDED]

710:60-3-164 [AMENDED]

710:60-3-168 [AMENDED]

710:60-3-184 [AMENDED]

Subchapter 5. Motor Vehicle Titles

Part 5. Certificates of Title

710:60-5-51 [AMENDED]

710:60-5-55 [AMENDED]

Subchapter 9. Motor Vehicle License Agents/Agencies

Part 11. Agency Operation

710:60-9-120 [AMENDED]

Part 13. Provisions for Motor License Agent Application and Appointment

710:60-9-133 [AMENDED]

710:60-9-134 [AMENDED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. § 203

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# Permanent Final Adoptions

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Subchapter 3 *Registration and Licensing* has been amended to implement the provisions of SB 1339 [2018] which amended the Oklahoma Vehicle License and Registration Act to provide for a system where upon change in vehicle ownership the license plate previously issued for said vehicle stays with the owner and not the vehicle. Subchapter 3 has also been amended to add to Section 710:60-3-184 the qualification requirements for the Gold Star Survivor/Surviving Spouse license plates.

Subchapter 5 *Motor Vehicle Titles* has been amended to clarify the documentation that controls the determination of actual sales price of a used vehicle for purposes of calculating the amount of excise/sales tax due on vehicle transfers. Subchapter 5 has also been amended to implement the provisions of HB 2950 [2018] which prohibits a scrap metal dealer purchasing a vehicle from providing payment until the certificate of ownership has been submitted to the Oklahoma Tax Commission or a motor license agent and the vehicle is determined not to be stolen.

Subchapter 9 *Motor Vehicle License Agents/Agencies* has been amended to revise an incorrect rule reference in 710:60-9-120 and implement the provisions of HB 3278 [2018] and SB 1439 [2018] relating to motor license agencies.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 3. REGISTRATION AND LICENSING

### PART 1. GENERAL PROVISIONS

#### 710:60-3-10. General registration information

(a) **Motor vehicles to be registered; license tag required; title.** Every motor vehicle, except salvage and junked vehicles, vehicles on used car dealer's lots for sale and vehicles assigned to charitable organizations licensed through the Oklahoma Secretary of State's office, is required to be registered and a license tag displayed on the rear bumper. ~~In most cases, the tag is designed to remain on the vehicle until the Oklahoma Tax Commission authorizes a replacement and is renewed each year by means of a registration decal.~~ The type of registration required depends on the type of vehicle and, in some cases, its use. A vehicle cannot be registered without an Oklahoma title or proof that such Oklahoma title exists and is in the name of the registrant. Proof of previous year's registration must be obtained before renewing registration on any ~~non salvaged/non-salvaged~~ vehicle. A current mail-out registration notice is considered proof for either purpose.

(b) **Expiration; renewal; early renewal.** Registration may not be renewed before the first day of the month preceding expiration.

(c) **Registration and licensing of leased vehicle.** An individual leasing a vehicle may make application for any special

tag or registration rate that he or she is entitled to. A copy of the lease agreement, listing the applicant as lessee, must be submitted and attached to the Oklahoma Tax Commission's copy of the paperwork.

(d) **Information required from registrant.** Upon every application for registration of a vehicle in this state, the vehicle owner shall provide to the registering motor license agent the following information:

- (1) The driver license number of the vehicle owner, if the owner is an individual; or
- (2) The Federal Employer Identification Number of the owner if such owner is not an individual.

(e) **Proper entry of required information.** It shall be the duty of the registering motor license agent to properly enter the driver license number or Federal Employer Identification Number of the vehicle owner in the Motor Vehicle computer file record at time of registration of the vehicle.

#### 710:60-3-19. License plate transfer [REVOKED]

~~(a) **Retention and transfer of license plate.** A person may retain the license plate of any vehicle registered to that person to be transferred to a second vehicle. The license plate removed from the first vehicle may be transferred to a new or used second vehicle.~~

~~(b) **Penalty for failure to purchase replacement tag.** Any person failing to purchase the replacement plate within 30 days from the assignment date of the second vehicle will be assessed a daily penalty beginning on the 31st day to accrue for no more than 30 days. On the 31st day, the penalty will be the maximum allowed by statute on the replacement plate for the first vehicle.~~

~~(c) **Definitions.**~~

- ~~(1) **"First Vehicle"** means the vehicle from which a license plate is removed and transferred to a second vehicle;~~
- ~~(2) **"Second Vehicle"** means the vehicle to which a license plate is transferred after removal from a first vehicle; and~~
- ~~(3) **"Vehicle"** means a passenger vehicle and does not include farm or commercial vehicles. This does include motorcycles and motor homes.~~

~~(d) **Issuing replacement tag for first vehicle.** The replacement tag is to be issued on currently registered vehicles. If the tag for this vehicle has expired, it must be renewed before the replacement tag can be issued. If the second vehicle is not being registered at the same time as the replacement, the owner must keep a copy of the replacement tag registration. It will be necessary to turn that copy in when registering the second vehicle. An insurance verification is not required for this registration.~~

~~(e) **Reissuing the tag to a new vehicle, used vehicle from out of state, or a vehicle which expired on a used dealer's lot.** A registration listing the tag being transferred and a new decal will be issued upon collecting the proper amount of registration fees due. Proof must be provided that a replacement tag was issued for the first vehicle. The proof required is a copy of the replacement tag registration. This copy should be attached to the Oklahoma Tax Commission copy of the registration of~~

the second vehicle. If the applicant has not purchased a replacement tag and has sold the first vehicle, the replacement fee plus any penalties will be collected.

**(f) Reissuing the tag to a used vehicle already registered in Oklahoma.**

~~(1) **When registrations are current.** If the vehicle registration is current, a new month and yearly decal corresponding to the tag being surrendered, will be issued to be placed on the tag being transferred. The tag removed from the second vehicle must be surrendered to the tag office. This registration will be issued reflecting the Motor License Agent's fee due only.~~

~~(2) **When registration has expired.** If the tag on the second vehicle has expired, it will be necessary for the new owner to renew the registration before transferring his tag to the new vehicle.~~

**710:60-3-28. License plate remains with owner**

(a) **General provisions.** Effective July 1, 2019, Oklahoma no longer allows a motor vehicle license plate to remain with the vehicle when the vehicle is sold, traded or transferred. The registration license plate and certificate of registration shall be issued to, and remain in the name of, the owner of the vehicle registered and the license plate shall not be transferable between motor vehicle owners.

(b) **Registration procedures.** When a vehicle is sold or transferred in the state, the following registration procedures apply:

(1) **Vehicle owner.** Any vehicle owner who sells, trades, or transfers a vehicle must remove the license plate from the vehicle and either:

(A) **Retain the plate.**

(B) **Transfer the plate to a newly acquired vehicle of the same registration classification for which no additional registration fee is due for the remainder of the current registration period pursuant to authorization of the Oklahoma Tax Commission or a motor license agent, or**

(C) **Transfer the plate to a newly acquired vehicle of the same registration classification but different registration year requiring payment of additional registration fees.**

(2) **Vehicle buyer.** In the event the owner of a license plate purchases, trades, exchanges or otherwise acquires a vehicle for which a license plate has been issued during the current registration period, and the license plate has not been removed by the previous owner in accordance with this Section, the new owner of the vehicle shall remove and return the license plate to the Tax Commission or a motor license agent. If the license plate has expired, the new owner may surrender the license plate to the Tax Commission or motor license agent.

(c) **Calculation of registration fee.** The registration fee due for the newly acquired vehicle to which a plate is transferred will be prorated based on the full registration months remaining on the transferred plate at the time of assignment.

(d) **Refund ineligibility.** The plate owner shall not be entitled to a refund under the following circumstances:

(1) **When the registration fee for the vehicle to which the plate is transferred is less than the registration fee for that vehicle to which the license plate was last assigned, or**

(2) **When the owner does not have or does not acquire another vehicle to which the license plate may be transferred.**

(e) **Title, registration and tax/fee payment requirements.**

The new owner of a motor vehicle must within thirty (30) calendar days from the date of vehicle purchase or acquisition make application to title and register the vehicle by the transfer to, or purchase of, a license plate for the newly acquired vehicle with the Tax Commission or motor license agent and pay excise and sales taxes and applicable title and registrations fees in addition to any delinquent taxes, fees, interest and penalty associated with the plate as provided by law.

(f) **Penalty.** Delinquent registration penalty begins to apply on the thirty-first (31<sup>st</sup>) day following assignment of ownership accruing at \$1.00 per day, to a maximum penalty assessment of \$100.00 (100 days).

(g) **Vehicle operation.** A vehicle purchased with the license plate having been removed may be lawfully operated on the streets and roadways without number plates for a maximum of five (5) days from the date of acquisition or purchase if a dated notarized bill of sale is carried, for possible presentation to law enforcement, in the vehicle during the five (5) days. Vehicles purchased from a licensed motor vehicle or used motor vehicle dealer may be operated thirty (30) days from the date of acquisition pursuant to issuance of a temporary license tag by the licensed dealer. See 710:60-3-56.

(h) **Vehicle transferring from deceased spouse.** A surviving spouse, desiring to operate a vehicle devolving from a deceased spouse, shall present an application for certificate of title to the Tax Commission or motor license agent in his or her name within thirty (30) days of obtaining ownership. The Tax Commission or motor license agent shall then transfer the license plate to the surviving spouse.

**PART 3. PENALTIES**

**710:60-3-33. ~~Vehicles with expired Oklahoma license plates purchased from a used car or used travel trailer dealer~~**

~~Delinquent registration penalty begins to apply on the thirty-first (31<sup>st</sup>) day following assignment of ownership, in the amounts described under OAC 710:60-3-30(a) and (b). If a transfer of ownership fee is also due, only the delinquent penalty outlined in OAC 710:60-3-34 is to be assessed. Delinquent excise tax penalty, and sales tax penalty and interest, when applicable, are also to be assessed.~~

**710:60-3-34. ~~Transfer of ownership fee [REVOKED]~~**

~~(a) **Penalty.** Delinquent penalty begins to apply on the thirty first (31<sup>st</sup>) day following assignment of ownership, in the amounts described under OAC 710:60-3-30(a). If the vehicle was purchased from an Oklahoma dealer with expired Oklahoma registration (OAC 710:60-3-33), only this transfer of~~

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ownership fee penalty is to be assessed. Delinquent excise tax penalty, and sales tax penalty and interest, when applicable, are also to be assessed.

(b) **Commercial trailers.** Upon the transfer of ownership of an Oklahoma registered commercial trailer, a new plate and registration fee is due.

## PART 5. DEALERS

### 710:60-3-54. Used vehicle dealer's registration policy

(a) ~~**Renewal not required; registration to be current when vehicle acquired.** A licensed used trailer dealer or used motor vehicle dealer is not required to renew the registration of a vehicle that expires on his lot while being held for resale, provided the registration was current when the vehicle was assigned to him. However, any dealer who is assigned a vehicle when it is in the registration penalty period must renew the registration for a full year, paying any penalty due. Manufactured home dealers are required to keep all manufactured homes registered. [See: 710:60-3-132, paragraph (5)]~~

(b) **Used vehicles acquired from other states.** Used vehicles from other states, acquired for resale by Oklahoma used dealers require an Oklahoma title in the dealership's name. No registration is required. Used motor vehicles acquired from other states by licensed Oklahoma motor vehicle dealers may either be titled in the dealership's name, or ownership may be reassigned by the dealership on the out-of-state title. When reassigning an out-of-state title, the motor vehicle dealer must satisfy the inspection and dealer reassignment provisions of 47 O.S. § 1105. Oklahoma dealers may reassign on another state's reassignment sheet only when ownership was assigned to the Oklahoma dealer by a dealer in that other state, on that other state's reassignment sheet. No notarization of an Oklahoma dealer's reassignment is required if the title, or reassignment sheet, being reassigned is from a non-notary state.

(eb) **Exemption from transfer registration fee; revenue stamps required.** Used vehicle dealers are exempt from the transfer registration fee when getting a transfer title in their name. However, each time a used dealer makes an assignment, a revenue stamp must be attached on the back of the Oklahoma title. Commercial trailer dealers or manufactured home dealers are not required to attach tax stamps.

(ec) **Removal of out-of-state license plates.** If a dealer obtains a vehicle with an out-of-state tag, it should be removed. Beginning July 1, 2019, dealers should remove out-of-state plates and Oklahoma license plates from any vehicles they have in inventory. If the vehicle has an Oklahoma tag, it shall remain on the vehicle.

(ed) **Procedure upon sale of vehicle.** When a used dealer sells a vehicle, he or she shall advise the owners to title and register the vehicle within thirty (30) days. ~~If the Oklahoma registration is still current, the new owner shall title, pay excise tax, sales tax, and a transfer registration fee. If, on the assignment date, the registration has expired, the new owner must register the vehicle from the month of assignment, paying all applicable taxes and fees.~~

## PART 15. SPECIAL LICENSE PLATES

### 710:60-3-162. Disabled American Veteran (DAV) plates and rate

(a) **Qualification.** Those veterans with at least 50% service connected disability, as certified by the United States Department of Veterans Affairs or a branch of the United States Armed Forces, have the option of receiving their regular plate or a special plate designated "D.A.V." at a reduced rate. Those veterans not desiring the "D.A.V." plate may continue to purchase the regular tag for two (2) vehicles with a rated carrying capacity of one (1) ton or less at any tag agency. An insurance verification fee will also be charged.

(b) **Application; fees; renewal.** To receive the special "D.A.V." plate, the DAV Card or current authorization letter, a photocopy of the current registration, Security Verification Card, and a check which includes mailing fees and insurance for each tag ordered, must be submitted to the Oklahoma Tax Commission. After the initial issuance from the Oklahoma Tax Commission, the plate can be renewed at any tag office.

(c) ~~**Procedure for retention of tag; use on replacement vehicle.** When a vehicle with a "D.A.V." tag is sold, the "D.A.V." tag is placed on the new vehicle, if any, obtained by the disabled veteran. The registration issued on the replacement vehicle will show the "D.A.V." tag number and decal. The owner may send a photocopy of the new title and current registration to the Special Tags Section or contact the Special Tag Section by telephone.~~

(d) **Procedure upon sale to non-qualifying purchaser.** When a vehicle is sold by a D.A.V. party to a purchaser not qualified for the reduced rate, the purchaser must pay for the remaining portion of the registration period at the applicable rate. When a vehicle is sold which has been registered at the reduced rate and issued a metal DAV plate, the purchaser will be issued a regular metal plate and charged the applicable rate.

### 710:60-3-164. Ex-prisoner of war (POW) plates

(a) **Qualification.** An Ex-POW tag may be issued to those persons certified by the Oklahoma Department of Veterans Affairs, for no more than two (2) vehicles of one (1) ton or less. Application forms may be obtained from the Oklahoma Department of Veterans Affairs (ODVA). Completed applications and insurance verification, with payment, are to be sent to the ODVA for certification. Certified applications will then be sent to the Special Plate Section for issuance of plates. The plate will be mailed to the applicant.

(b) **Renewal.** Renewal of Ex-POW tags may be made at the local motor license agency.

(c) ~~**Procedure for retention of plate; use on replacement vehicle.** If a vehicle with an ex-POW plate is sold, the ex-POW plate will be placed on the new vehicle, if any, obtained by the ex-POW. The owner will send a photocopy of the new title and current ex-POW registration to the Special Plate Section. The registration issued on the replacement vehicle will show the ex-POW plate number and decal.~~

(d) **Procedure upon sale to non-qualifying purchaser.** If a vehicle is sold by an ex-POW party to a purchaser not qualified

for the reduced rate, the purchaser must register the vehicle from the date of purchase and obtain a regular license plate.

**710:60-3-168. Indian tribal license plates**

(a) **State of Oklahoma Indian tribal government license plates.** Vehicles titled in the name of a federally recognized Indian tribe only and used exclusively for the furtherance of its tribal functions, may be issued State of Oklahoma Indian tribal government license plates, or tribal compact license plates, pursuant to ~~subsection (b)(c) of this Section.~~ Initial applications for State of Oklahoma tribal license plates are made directly to the Oklahoma Tax Commission. Application for registration renewal of such plates may be made to the Oklahoma Tax Commission, or a motor license agent. Insurance verification, or a properly completed affidavit of non-use, is required at time of application.

~~(1) **Retention of license plate by tribe; transfer to replacement vehicle.** When a vehicle with a State of Oklahoma tribal license plate is sold, the tribe may retain the plate for transfer to the replacement vehicle. The plate cannot be transferred to another tribe.~~

~~(2b) **Procedure upon sale to a non-qualifying purchaser.** When ownership of a vehicle is transferred from a tribe to a new owner not qualifying for the reduced rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain the appropriate replacement license plate.~~

~~(bc) **Indian tribal compact license plates.** Pursuant to a signed compact between a tribe and the State of Oklahoma, special tribal license plates may be designed and offered for issuance to tribal members, or the tribal government, at Oklahoma motor license agencies. Associated taxes and fees will be assessed and distributed pursuant to the provisions of the applicable compact.~~

~~(1) **Tribal membership of individual required.** Proof of membership in the tribe must be presented at time of registration by an individual member. The tribal member must be reflected on the Oklahoma certificate of title as an owner of the vehicle.~~

~~(2) **Tribal government registration.** Motor vehicles owned and operated by the tribe for governmental purposes are eligible for Indian tribal compact plates. The tribal government must be reflected as owner on the Oklahoma certificate of title. The registration fee applicable to Indian tribal license plates pursuant to the provisions of 47 O.S. § 1135.1(B)(4) will be assessed.~~

~~(3) **Procedure upon sale by an individual member to a non-tribal purchaser.** When a vehicle registered to an individual tribal member is transferred to a non-tribal member, the purchaser must obtain a replacement license plate when transferring ownership into his or her name.~~

~~(4) **Procedure upon sale by tribal government.** When a vehicle registered to the tribal government is transferred from the tribe to a new owner not qualifying for the reduced tribal government rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain the appropriate replacement license plate. The tribe may retain the special tag for transfer to the~~

replacement vehicle. The tag cannot be transferred to another tribe.

(5) **Registration information provided to tribe.** Tribal member registration information will be provided by the Commission to the tribe, pursuant to the compact provisions.

**710:60-3-184. Gold Star Parents license plates**

(a) ~~**Qualification and application.** The designated parties meeting the qualification requirements outlined below are eligible for Gold Star license plates. (47 O.S. § 1135.2)~~

~~(1) **Parents.** The parent of a ~~Veteran~~veteran killed in action is eligible to display a Gold Star ~~Parent~~ license plate ~~on each vehicle~~for no more than two (2) vehicles with a rated carrying capacity of one (1) ton or less. The parent must submit proof of eligibility, consisting of a Gold Star Parent membership card or a birth certificate ~~confirming applicant's relationship with the veteran and one of the items listed in (1) through (3)(A) or (B) of this subsection~~paragraph, along with insurance verification, a completed application, and any fees prescribed by statute, to the Oklahoma Tax Commission:~~

~~(1A) A certification letter from the Oklahoma Department of Veterans Affairs, stating that the veteran was killed in action;~~

~~(2B) A deceased Veterans DD form 214; or~~

~~(3) A Gold Star Mother's membership identification card.~~

~~(2) **Surviving spouse or child.** The surviving spouse or child of an honorably discharged veteran who died as a direct result of the performance of active duties or as a result of a service-connected injury, illness or disease is eligible to display a Gold Star license plate on any vehicle with a rated carrying capacity of one (1) ton or less. The surviving spouse or child must submit proof of eligibility, consisting of a birth certificate or other proof of relationship to the veteran and one of the items listed in (A) through (C) of this paragraph, along with insurance verification, a completed application, and any fees prescribed by statute, to the Oklahoma Tax Commission:~~

~~(A) DD Form 1300, Report of Casualty,~~

~~(B) Death Certificate, DD Form 214 and a statement veteran's death was due to or a consequence of a service-connected disability, or~~

~~(C) A letter from the Oklahoma Department of Veteran Affairs confirming qualifying circumstances of the veteran's death.~~

(b) **Renewal.** Renewal of a Gold Star ~~Parent~~ license plate may be made at the local motor license agency or at the Oklahoma Tax Commission. To renew a Gold Star ~~Parents~~ license plate, the applicant must pay the annual fee prescribed by statute, ~~in lieu of all other vehicle registration fees. [47 O.S. § 1135.2(C)]~~

(c) ~~**Procedure for retention of plate; use on replacement vehicle.** If a vehicle with a Gold Star Parent plate is sold, the plate may be placed on the new vehicle. The owner must send a~~

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photocopy of the new title, and current Gold Star Parent registration to the Oklahoma Tax Commission. A replacement registration will be issued, reflecting the current Gold Star Parent plate/decals on the new vehicle.

(d) **Procedure upon sale to non-qualifying purchaser.** If a vehicle displaying a Gold Star Parent license plate is sold to a purchaser not qualified for the reduced rate, the purchaser must register the vehicle from the date of purchase and obtain a regular license plate.

## SUBCHAPTER 5. MOTOR VEHICLE TITLES

### PART 5. CERTIFICATES OF TITLE

#### 710:60-5-51. Original certificate of title

(a) **Completed application required.** An application for Oklahoma Certificate of Title must be completed and forwarded to the Commission upon application for an original Oklahoma title.

(b) **Manufacturer's statement of origin.** A Manufacturer's Statement of Origin (MSO) must accompany the title to a vehicle which has never been titled or registered. If no MSO has yet been provided to the owner at time of initial title application, an original Oklahoma title may be placed on document hold upon presentation of ownership documentation acceptable to the Commission, such as a completed contract of sale from the selling dealership.

(c) **Out-of-state titles; negotiable titles; memorandum titles.** When issuing an original title from an out-of-state title to the individual whose name appears on the face, all information must be correctly transcribed from the out-of-state title. When presented with any document other than a negotiable out-of-state title, the Oklahoma title will be placed on document hold and not be released until the negotiable out-of-state title is surrendered. When the Oklahoma title is to be placed on document hold, the applicant is to be asked whether the vehicle is subject to any lien and, if so, is to complete an affidavit outlining the lienholder information. When an out-of-state title is submitted reflecting a secured party, the lien will be carried forward to the Oklahoma record, as outlined in OAC 710:60-5-113. If the negotiable out-of-state title is being held by the secured party, the owner of the vehicle shall file an affidavit with the Commission or the motor license agent stating that title to the vehicle is being held by a secured party and has not been issued pursuant to the laws of the state where titled, and that there is an existing lien or encumbrance on the vehicle. The current name and address of the secured party or lienholder shall also be stated in the affidavit. The form of the affidavit shall be prescribed by the Oklahoma Tax Commission. In most instances, negotiable titles are those containing ownership assignment sections. Lack of assignments ordinarily indicates the title is non-negotiable.

(d) **Assigned or reassigned out-of-state titles.** An out-of-state title which has been properly assigned or reassigned is acceptable ownership documentation to qualify for issuance of an original Oklahoma title. Notarization is

required on any assignment completed in a state that requires such notarization.

(e) **Title issued only to assignee.** Under no circumstances shall an Oklahoma Certificate of Title be issued to an individual(s) or entity other than to whom the assignment is made.

(f) **Actual sales price.** The actual sales price, commonly referred to as "purchase price", is required for any vehicle on which an Oklahoma title is to be issued and excise tax and/or sales tax collected. The documentation described in this subsection is required to establish the actual sales price:

(1) For new vehicles, a purchase contract or bill of sale from the selling dealer will be required.

(2) For used vehicles, a purchase price reflected in the ownership assignment area of those title certificates which provide an area for that information, or a purchase contract, or bill of sale will be required. If ~~none~~ neither of these documents ~~are~~ is available, a "Declaration of Vehicle Purchase Price" must be completed by the purchaser. The vehicle purchase price indicated by the purchase contract, bill of sale or Declaration of Vehicle Purchase Price is the amount to be utilized for purposes of calculation of motor vehicle excise and sales taxes even under circumstances when a different amount has been entered in the vehicle assignment portion of the certificate of title.

(3) A purchase contract or bill of sale offered only to establish the actual sales price pursuant to this subsection, and not to convey ownership, need not be notarized.

(g) **IRP registration title hold.** When an applicant for an original Oklahoma title does not complete a registration transaction at that time, due to a declaration of intent to subsequently register the vehicle under the International Registration Plan (IRP), the Oklahoma title will be placed on hold until that registration transaction is completed and confirmed.

#### 710:60-5-55. Junked titles

(a) **Junked title defined.** A junked vehicle is any vehicle which is incapable of operation or use on the highway, has no resale value except as a source of parts or scrap and has an eighty percent (80%) loss in fair market value.

(b) **Out-of-state junked titles; junked title permanent classification.** Any vehicle which is a junked vehicle or is specified as a junked vehicle or the equivalent thereof on a certificate of title from another state is to receive an Oklahoma Junked Title. Once a Junked Title is issued on a vehicle, it will remain as such permanently.

(c) **Procedure for cancellation of title for junked vehicle.** The owner of any vehicle which is incapable of operation or use on the public roads and has no resale value except as parts, scrap or junk, may deliver the certificate of title to the Oklahoma Tax Commission, accompanied by an Affidavit for Cancellation of Oklahoma Title (OTC Form 701-8). Upon verification that any perfected lien against the vehicle has been released and the registration is current, the certificate of title shall be cancelled. There is no charge to the vehicle owner for this cancellation. If unable to cancel the title, an explanation will be returned to the submitting owner.

(d) **Subsequent transfer of ownership of vehicle for which title has been cancelled.** Once a title is cancelled, no subsequent title or registration may be issued. Any subsequent transfers of ownership will be done so on a certificate of ownership (OTC Form 766). The format of this certificate is prescribed by the Oklahoma Tax Commission and furnished to all motor license agencies. Any form which contains all the information listed on the Oklahoma Tax Commission form will be acceptable.

(e) **Inspection for absence of vehicle identification number.** If there is no public VIN on the vehicle, it shall be inspected by a law enforcement officer to verify the absence of the number and the corresponding statement shall be signed by the officer on the certificate of ownership.

(f) **Transfer of ownership for vehicles over ten model years old, or vehicles being sold to a scrap metal dealer, for which title is lost, cancelled or not available.** Any vehicle over ten model years old which is not roadworthy and not capable of repair for operation or use on the roads and highways, or a vehicle which is being sold to a scrap metal dealer pursuant to 2 O.S. § 11-92, and on which the certificate of title has been lost, cancelled or otherwise not available, shall also transfer ownership by use of the certificate of ownership. The scrap metal dealer shall not provide payment for the vehicle until the certificate of ownership has been submitted to the Oklahoma Tax Commission or a motor license agent, and the vehicle is determined not to be stolen. Use of this transfer of ownership form will result in cancellation of the Oklahoma title, if it has not already been done. Unless being sold to a scrap metal dealer as referenced above, if the vehicle is ten (10) model years or newer, a certificate of ownership may not be utilized unless the title has previously been cancelled.

(g) **Procedure for transfers by use of certificate of ownership.** This certificate of ownership will be a three part form. The buyer and seller shall each retain a copy and within thirty (30) days of the transaction, the seller shall submit one copy to the Oklahoma Tax Commission or a motor license agent with the applicable fee. All requests for ownership transfer via certificate of ownership must be reviewed and approved by the Commission before processing. The Commission shall review the documentation and vehicle record to ensure the owner of record has submitted a properly completed certificate on an eligible vehicle. The record will be checked against NCIC files for the presence of a stolen vehicle record. If a stolen vehicle report is on file, the appropriate law enforcement agency will be contacted and the transaction will remain on hold, pending that agency's response. If an active lien is on file and the transaction is approved, the lienholder will be notified of the certificate of ownership transfer. If the transaction is not approved, an explanation will be returned to the submitting buyer and seller.

**SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES**

**PART 11. AGENCY OPERATION**

**710:60-9-120. Summary of operational requirements**

The following is a summary of operational requirements for agents and agencies:

- (1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours required of a specific agency may be reduced upon written approval from the Oklahoma Tax Commission.
- (2) Agents are required to collect fees as outlined by state statute, and issue all documents (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.
- (3) Agents are required to deposit all monies required by the Commission into the designated Oklahoma Tax Commission bank account within one (1) banking day of collection, preparing an Advice of Deposit which is to be submitted to the Oklahoma Tax Commission in the manner prescribed by the Commission.
- (4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission within the time frame outlined in Section ~~710:60-9-55~~710:60-9-72.
- (5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission motor license agents manual.
- (6) Agents are required to provide a notary within their agency.
- (7) Agents are required to insure that all transactions are processed and entered to the Oklahoma Tax Commission computer system on a daily basis.
- (8) The Advice of Deposit shall be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. Advice of Deposit information is to be entered to the Oklahoma Tax Commission MLA deposit entry system immediately following depositing of the funds.
- (9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.
- (10) A motor license agent shall follow the process and procedures set forth in Section 710:60-9-94 for reporting and collecting dishonored checks on Tax Commission transactions. (11) Agents are required to maintain files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years.
- (12) Agents must pay or account for all missing items identified by an inventory audit.
- (13) Agents shall not issue license plates, registration decals, receipts, or any type of document until payment of all applicable taxes and fees has been received in full. Payment may be made by cash, money order, personal or company check, cashier's check, or by a nationally recognized credit or debit card. The Tax Commission shall determine which nationally recognized credit or debit

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cards will be required to be accepted by motor license agents, ensuring no loss of state revenue results from their use. All checks and money orders are to be made payable to the Oklahoma Tax Commission.

(14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

(15) Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(16) Agents are required to post the Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

(17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: the remitter's driver license number, or a Department of Public Safety identification number.

(18) Motor license agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

(19) Agents must maintain a clean, orderly office environment, conducive to taxpayer service.

(20) Agents shall comply with Oklahoma Tax Commission policies relating to the provision and maintenance of equipment furnished by the Commission.

### PART 13. PROVISIONS FOR MOTOR LICENSE AGENT APPLICATION AND APPOINTMENT

#### 710:60-9-133. Primary source of income

~~Effective July 1, 2009, the~~ The compensation from the agency must be the primary source of income for all appointed motor license agents in counties with a population in excess of 30,000 persons according to the latest Federal Decennial Census. The motor license agent shall annually submit an affidavit that the income from the agency is the motor license agent's primary source of income. The Commission may confirm the accuracy of that affidavit by examining income information from Commission files, or from an outside state or federal agency. By accepting appointment as a motor license agent, the appointee expressly grants consent to the Commission to examine the appointee's tax records, and other appropriate income-related information, for this purpose.

#### 710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours

(a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency. If the applicant assumes the location of an existing agency, the current agent may submit a letter of resignation contingent upon the appointment of the applicant regardless of the population of the municipality in which the agency is located.

The Oklahoma Tax Commission may, at its discretion, approve the relocation of an existing agency within a three (3) mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.

(b) No motor license agent shall select a location owned by a member of the Oklahoma Legislature or to any person related to a member of the Oklahoma Legislature within the third degree of consanguinity (by blood relation) or affinity (by marriage).

(c) The number of agency employees is to be determined by the motor license agent subject to the Oklahoma Tax Commission's approval.

(d) The motor license agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.

(e) The Oklahoma Tax Commission shall determine the amount of office space the motor license agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

(f) The Oklahoma Tax Commission shall determine the amount of public parking the motor license agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons. It shall be the responsibility of the motor license agent to ensure compliance with all applicable local and ADA (Americans with Disabilities Act) parking and customer access requirements.

(g) In addition to the payment of costs required by OAC 710:60-9-131(f) for new agents, existing motor license agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

(h) The motor license agent shall provide and maintain, within the agency, a personal computer with internet access for use during normal business hours. The personal computer equipment provided by the motor license agent must satisfy the technical requirements established for such equipment by the Commission. Should those technical requirements change, it shall be the responsibility of the motor license agent to upgrade

or replace their personal computer equipment as necessary to remain in continuous compliance.

[OAR Docket #19-564; filed 6-6-19]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #19-565]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions 710:65-1-2 [AMENDED] Subchapter 9. Permits 710:65-9-5 [AMENDED] Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act 710:65-18-10 [AMENDED] Subchapter 19. Specific Applications and Examples Part 11. "F" 710:65-19-110 [AMENDED] Part 17. "I" 710:65-19-158 [REVOKED] Part 23. "L" 710:65-19-191 [AMENDED] Part 25. "M" 710:65-19-216 [NEW] Part 31. "P" 710:65-19-260 [AMENDED] Part 45. "W" 710:65-19-365 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

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- Subchapter 19. Specific Applications and Examples Part 25. "M" 710:65-19-216 [NEW]

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n/a

GIST/ANALYSIS:

Sections 710:65-1-2 and 710:65-19-110 have been revised to update statutory citations consistent with the passage of Senate Bill 383 (2016) which created the Oklahoma Alcoholic Beverage Control Act.

Section 710:65-18-10 has been amended to correct and update the reference to the Tax Commission's website address.

Section 710:65-19-158 has been revoked as unnecessary and certain provisions thereof being in possible conflict with existing statutory provisions.

Section 710:65-19-191 has been amended to outline current Commission policy regarding the sales taxability of purchase and sales transactions by businesses engaged in the rental and/or laundering/cleaning of linens, apparel, diapers, mats/rugs or other items with the intent to withdraw any previous statements contrary to the ones outlined in this Section.

New Section 710:65-19-216 sets forth definitions, general permitting requirements and information regarding the computation of sales tax as applicable to the sale of medical marijuana. [68:1354]

Section 710:65-19-260 has been amended to clarify the sales tax treatment of sales of photographs and videos and associated services.

Section 710:65-19-365 has been amended to conform to the statutory definitions of "gross receipts", "gross proceeds" or "sales price". [68:1352]

Section 710:65-9-5 has been amended to correct a scrivener's error.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-2. Definitions

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

"Business" means any activity with the potential to generate a profit even if the business actually operates at a loss. This category also includes non-profit, religious and other organizations and persons who are otherwise exempt when they are conducting activities for a profit in competition with other businesses.

"Bundled Transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A "bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this paragraph:

- (A) "distinct and identifiable products" does not include: (i) packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof, including but not limited to, grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes; (ii) a product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the

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product purchased does not vary depending on the inclusion of the product provided free of charge, or (iii) items included in the definition of gross receipts or sales price, pursuant to this Section.

(B) **"one nonitemized price"** does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a **bundled transaction** shall not be considered a **bundled transaction** if it is:

(i) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. For purposes of this Section, "de minimis" means the seller's purchase price or sales price of taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) the retail sale of exempt tangible personal property and taxable tangible personal property where:

(I) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and

(II) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

**"Consumer"** or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

**"Consideration"** means and includes, but is not limited to:

(A) The price arrived at between purchaser and vendor.

(B) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(C) No deduction from gross receipts is permitted for services performed or work done on behalf of the vendor prior to transfer of such tangible personal property. [See: 68 O.S. § 1352(12)]

**"Delivery charges"** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

**"Gross receipts", "gross proceeds", or "sales price"** means the total amount of consideration including cash, credit, property, and services, for which personal property or services are sold, leased, or rented; valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller's cost of the property sold;

(B) The cost of materials used, labor, or service cost;

(C) Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(D) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(E) Delivery charges and installation charges, unless separately stated on the invoice, billing, or similar document given to the purchaser; or

(F) Credit for any trade-in.

**"Gross receipts", "gross proceeds", or "sales price"** shall not include:

(A) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(B) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(C) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser. [68 O.S. § 1352(12)]

*"Gross receipts", "gross proceeds", or "sales price" shall include consideration received by the seller from third parties if:*

- (A) *The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;*
- (B) *The seller has an obligation to pass the price reduction or discount through to the purchaser;*
- (C) *The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the ~~purchase~~purchaser; and*
- (D) *One of the following criteria is met:*
  - (i) *The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*
  - (ii) *The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or*
  - (iii) *The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.*

**"Lease or rental"** means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

- (A) **"Lease or rental"** does not include:
  - (i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
  - (ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or
  - (iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.
- (B) **"Lease or rental"** does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by

reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

**"Retail sale"** means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

**"Sale"** means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state. All consideration received for the sale is included in gross receipts subject to tax.

- (A) **"Sale"** does include but is not limited to:
  - (i) *The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;*
  - (ii) *The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;*
  - (iii) *The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;*
  - (iv) *The furnishing or rendering of services taxable under the Oklahoma Sales Tax Code; and*
  - (v) *Any use of motor fuel or diesel fuel by a supplier, as defined in Section 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph.*

(B) **"Sale"** does not include sale and leaseback.

**"Sales tax"** means all applicable state, city and county sales tax.

**"Sales value"** means:

- (A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or
- (B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with ~~37 O.S. § 57737A~~ O.S. § 5-107, the total retail

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sales price for sales of alcoholic beverages only, calculated pursuant to *OAC 710:20-5-4*; or

(C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or

(D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or

(E) Otherwise, "**sales value**" means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

"**Tangible personal property**" means *personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses*. For purposes of the Oklahoma Sales Tax Code, "**tangible personal property**" includes electricity, water, gas, steam and prewritten computer software. [68 O.S. § 1352(24)] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. "**Tangible personal property**" does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes. [See: 68 O.S. § 1352; 68 O.S. § 1354; See Also: 60 O.S. §§ 7, 8]

"**Tax**" means all state, applicable city and applicable county tax.

"**Use tax**" means all applicable state and city use tax.

"**User**" or "**consumer**" means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

### SUBCHAPTER 9. PERMITS

#### 710:65-9-5. Previously revoked or suspended sales tax permits

(a) A new sales tax permit will only be issued for a previously suspended or revoked permit if the vendor:

- (1) Pays, or makes satisfactory arrangements to pay, all outstanding amounts, including the amounts of tax, penalties, interest and costs, if any costs were incurred.
- (2) Files all returns due and outstanding.

(3) Pays the required fees for renewal or issuance of permits.

(4) Provides the security demanded to the full extent provided by law.

(5) Confirms in writing that he will henceforth comply with all of the provisions of the laws and the rules prescribed by the Commission.

(b) If the taxpayer becomes delinquent or otherwise fails to comply with the applicable statutes and regulations, the Commission may immediately initiate proceedings to revoke the newly issued permit.

(c) No previous holder of a sales tax permit which has been permanently revoked ~~may~~ be issued a sales tax permit without the express action of the Commission. [See: 68 O.S. §1364]

### SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

#### 710:65-18-10. Effective dates of sales and use tax rate changes and of municipal boundary changes

(a) Changes in municipal or county sales or use tax rates shall become effective on the first day of the calendar quarter following the sixty (60) day notice to vendors of such rate change, as required by law, or in the case of purchases from printed catalogs, the notice provided shall be one hundred twenty (120) days.

(b) To facilitate giving sixty (60) ~~days~~ day notice to vendors of the changes in municipal and county sales tax rates and changes in the boundaries of municipalities, and to ensure compliance with the statutory directive that such changes be effective on the first of a calendar quarter, the municipality or county must give the notice of any changes in accordance with the following schedule:

(1) Where notice of a change in rate or boundary is received by the Tax Commission on January 1 through January 15, such rate or boundary change shall be effective for sales and use tax purposes on the following April 1.

(2) Where notice of a change in rate or boundary is received by the Tax Commission on April 1 through April 15, such rate or boundary change shall be effective for sales and use tax purposes on the following July 1.

(3) Where notice of a change in rate or boundary is received by the Tax Commission on July 1 through July 15, such rate or boundary change shall be effective for sales and use tax purposes on the following October 1.

(4) Where notice of a change in rate or boundary is received by the Tax Commission on October 1 through October 15, such rate or boundary change shall be effective for sales and use tax purposes on January 1 of the following year.

(c) Failure to provide timely notice to the Commission of a rate or boundary change will delay the effective date of the rate or boundary change to the first day of the calendar quarter

following such notice being given to the Commission and to the public for the requisite sixty (60) days.

(d) Vendors will be notified of rate changes by posting the changes to the rate charts available on the Tax Commission website at: [www.oktax.state.ok.us](http://www.oktax.state.ok.us) [www.tax.ok.gov](http://www.tax.ok.gov).

**SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES**

**PART 11. "F"**

**710:65-19-110. Food; eating and drinking establishments**

(a) The sale of meals or non-alcoholic or alcoholic beverages is subject to sales tax, and any person or establishment making such sales will be considered a vendor and will be required to hold a valid sales tax permit. Such person or establishment will then be required to charge, collect, and remit the appropriate sales tax to the Commission based on the total gross receipts, or for the sale of alcoholic beverages, based on the total retail value, as set out in ~~37 O.S. §576(E)~~ 37A O.S. §5-105.

(b) Fund raising meals or non-alcoholic beverages sold in excess of the regular selling price are subject to sales tax on the gross receipts. Fund raising sales of alcoholic beverages are subject to sales tax on the total retail value, as prescribed by ~~37 O.S. §576(E)~~ 37A O.S. § 5-105.

(c) The vendor of meals or beverages cannot buy exempt any tangible personal property consumed in the operation of his business, including fixtures, linens or silverware. Paper napkins, paper cups, disposable utensils, disposable hot containers and other one-way carry-out materials may be purchased exempt as purchases for resale.

(d) Meals or non-alcoholic beverages provided to employees or customers at no cost, if no valuable consideration is received or indicated in vendor's records, are not subject to sales tax on gross receipts, but sales tax is due from the vendor, as a consumer user, on the "sales value" of the meal or the beverage as that term is defined in *OAC 710:65-1-2*.

(e) Sales tax is due on the total retail value of all alcoholic beverages, including alcoholic beverages provided to employees or customers at no cost or at a reduced cost, pursuant to ~~37 O.S. §576(E)~~ 37A O.S. § 5-105.

**PART 17. "I"**

**710:65-19-158. Installation, alteration and special service charges [REVOKED]**

~~(a) Where the vendor engages in the business of selling tangible personal property and such tangible personal property is installed or altered for the purchaser by the vendor (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the vendor on account of his charges for such installation, alteration or other special service must be included in the receipts~~

~~by which his sales liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold. This is true where the charge for the property which is sold and the charge for installation, alteration or other special services is billed by the vendor to his customers are included in a single billed price.~~

~~(b) On the other hand, where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not a part of the "selling price" of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted and billed and need not be included in the figure upon which the seller computes his sales tax liability.~~

**PART 23. "L"**

**710:65-19-191. Laundry and garment bags ~~Businesses engaged in the rental and/or laundering of linens, apparel, diapers, mats/rugs or other items~~**

~~Sales of laundry, garment bags and other packaging materials and supplies to operators of laundry and dry cleaning establishments are subject to tax.~~

~~(a) Linen and uniform rental and cleaning services. Businesses which rent clean linens, apparel, diapers, rugs/mats or other items to consumers must obtain an Oklahoma sales tax permit and collect and remit state and any applicable local sales tax on the total charges billed to customers without any deduction for laundering, repairing, or cleaning services rendered in association with the rental of such items.~~

~~(1) Exempt purchases. Pursuant to its sales tax permit, property which is to be rented in addition to wrapping materials/garment bags in which such property is to be furnished to customers may be purchased exempt from sales tax. Likewise, items such as buttons and zippers used in the repair of rented apparel may also be purchased tax exempt.~~

~~(2) Taxable purchases. Materials, supplies, tools and equipment including soaps, detergents cleaning fluids, deodorants, bleaches, water, electricity, natural gas, washers, dryers, ironers, mangles and all other tangible personal property used and consumed to conduct their rental business are subject to sales tax when purchased.~~

~~(b) Laundries and dry cleaners. Amounts charged by establishments for the service of laundering or dry cleaning articles of clothing of their customers are not subject to sales tax. Laundries and dry cleaners pay sales/use tax on all items i.e., laundry equipment, cleaning chemicals, garment bags, etc., purchased or rented for use and consumption in the provision of their nontaxable service.~~

**PART 25. "M"**

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## 710:65-19-216. Medical marijuana

(a) **Definitions.** The following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Commission"** means the Oklahoma Tax Commission.
- (2) **"Department"** means the Oklahoma State Department of Health.
- (3) **"Dispensary"** means an entity that has been licensed as a dispensary by the Department pursuant to Title 63 of the Oklahoma Statutes.
- (4) **"Grower" or "Commercial Grower"** means an entity that has been licensed as a commercial grower by the Department pursuant to Title 63 of the Oklahoma Statutes.
- (5) **"Medical Marijuana"** means marijuana that is grown, processed, dispensed, tested, possessed, or used for a medical purpose.
- (6) **"Medical Marijuana Product"** means a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient, including but not limited to oils, tinctures, edibles, pills, topical forms, gels, creams, forms medically appropriate for administration by vaporization or a nebulizer, patches, tinctures, and liquids excluding live plant forms.
- (7) **"Processor"** means an entity that has been licensed as a processor by the Department pursuant to Title 63 of the Oklahoma Statutes.

(b) **General permitting requirements.** In order to begin selling medical marijuana and medical marijuana products, a dispensary must either hold or obtain an Oklahoma sales tax permit from the Commission pursuant to OAC 710:65-9-1.

(c) **Sales of medical marijuana and marijuana products.** Gross receipts derived from sales of medical marijuana and medical marijuana products are subject to state and local sales tax.

(d) **Sales tax computation.** The 7% gross receipts tax is not part of the gross receipts for purposes of calculating the sales tax due, if the tax is shown separately from the price of the medical marijuana. Example:

- (1) Medical Marijuana \$ 100.00
- (2) 7% Gross Receipts Tax \$ 7.00
- (3) State & Local Sales Tax [8.5%] \$ 8.50 (use applicable tax rate for your location)
- (4) Total \$ 115.50

(e) **Agricultural sales tax exemption permit eligibility.** Provided all other requirements are met, persons possessing a commercial grower license issued by the Department are eligible for an agricultural sales tax exemption permit. The applicant grower must provide the commercial grower license number issued to the grower by the Department.

(f) **Manufacturer's sales tax exemption permit ineligibility.** The processing of marijuana is not commonly regarded as manufacturing; therefore, marijuana processors are not eligible for a manufacturer's sales tax exemption permit. However, processors are eligible for an Oklahoma sales tax permit which

will allow them to purchase marijuana and other marijuana products exempt from sales tax to be resold to dispensaries.

## PART 31. "P"

### 710:65-19-260. **Commercial photographers and photographic goods and services videographers**

(a) **Sales subject to tax.** Sales of tangible personal property and taxable services by commercial photographers and others to consumers or users of photographic goods and The gross receipts associated with the sale of photographs and videos delivered in a tangible format along with any services connected with such sales are subject to sales and use taxes, including, but not limited to, gross receipts from:

- (1) Sitting fees.
- (2) Taking, reproducing and selling photographs.
- (3) Processing, developing, printing and enlarging film.
- (4) Enlarging, retouching, tinting or coloring photographs.
- (5) Processing exposed film into color transparencies, mounted or unmounted.
- (6) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.
- (7)

(b) **Nontaxable sales.** The gross receipts related to the sale of digital photographs and videos that are transmitted electronically are not subject to sales and use tax. Charges for services associated with these sales are considered to be nontaxable.

(c) **School photographs.** Sales of photographs to students through schools are subject to tax, even though school personnel may participate by collecting payments from students.

(bd) **Sales for resale.** Property sold by or to a photographer or photo processor for resale by the purchaser is not subject to sales or use tax at the time of such sale, but the gross receipts from the resale to the consumer or user are taxable.

(ee) **Manufacturing.** The processing of photographic film by photographers is not considered manufacturing.

## PART 45. "W"

### 710:65-19-365. **Extended warranty**

(a) Charges for parts used to make extended warranty repairs are subject to sales tax on a withdrawal basis to the company providing the warranty service, if there is no charge to the customer for the parts. If an article purchased or acquired in trade is salvaged or 'cannibalized' for parts by the company providing the warranty service, the sale or use of such parts is subject to sales tax. In the case of the use of 'cannibalized' parts by a company providing warranty service, if there is no charge to the customer for the parts, such use is taxable as a withdrawal to the company providing the parts. Sales tax must be imposed if the customer is charged for the parts.

(b) If the agreement specifies the vendor will supply maintenance only and parts will be billed separately, the buyer will pay sales tax on the parts only. Labor charges, separately stated, are not subject to sales tax. If the charges to the customer include parts and labor, and the labor is not separately stated, the charges for labor will be considered part of gross receipts and will be taxable.

(c) If the price paid for the equipment includes an extended maintenance agreement or warranty, the buyer pays sales tax on the entire purchase price including the maintenance agreement. If the extended maintenance agreement is not included in the sales price ~~but is stated separately~~ and the buyer has an option of purchasing the agreement, the maintenance agreement is not considered to be a part of taxable gross proceeds.

[OAR Docket #19-565; filed 6-6-19]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES**

[OAR Docket #19-566]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 2. Cigarette Stamp Tax
  - Part 1. General Provisions
    - 710:70-2-9 [REVOKED]
- Subchapter 5. Excise on Tobacco Products
  - 710:70-5-12 [REVOKED]
- Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
  - 710:70-7-8 [REVOKED]
  - 710:70-7-9 [REVOKED]
  - 710:70-7-10 [AMENDED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. §§ 203 and 403.1

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Sections 710:70-2-9, 710:70-5-12, 710:70-7-8 and 710:70-7-9 have been revoked as unnecessary due to the fact that differences in tribal and nontribal cigarette and tobacco products tax rates no longer exist.

Section 710:70-7-10 has been amended to remove an invalid mailing address.

**CONTACT PERSON:**

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 2. CIGARETTE STAMP TAX**

**PART 1. GENERAL PROVISIONS**

**710:70-2-9. Cigarette stamp tax rates [REVOKED]**

(a) ~~Designation of rates.~~ Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty five (25) cigarettes are Twenty five percent (25%) greater than the rates for the twenty unit packages.

(b) ~~Inventories in stock.~~ The rates set out in this Section shall only be applicable to inventories of cigarettes acquired on or after January 1, 2005.

(c) ~~Rates effective January 1, 2005, applicable to non-tribal sales.~~ The non-tribal rate is \$1.03 per pack and is applicable to all non-tribal sales.

**SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS**

**710:70-5-12. Oklahoma tobacco products tax rates [REVOKED]**

(a) ~~Inventories in stock.~~ The rates set out in this Section shall only be applicable to inventories acquired on or after January 1, 2005.

(b) ~~Rates effective January 1, 2005, applicable to non-tribal sales.~~ The non-tribal rates are:

- (1) For little (Class A) cigars: \$0.036 each.
- (2) For Class B cigars: \$0.10 each.
- (3) For all other (Class C) cigars: \$0.12 each.
- (4) For smoking tobacco: Eighty percent (80%) of the Factory List Price.
- (5) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

(c) ~~Classification of little (Class A) cigars.~~ The term "little cigar" shall mean cigars of all descriptions made of tobacco, or any substitute therefore, and weighing not more than three (3) pounds per thousand. Absent evidence to the contrary cigars with a ring size of 20 or less shall be considered little cigars.

**SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY RECOGNIZED INDIAN TRIBES AND NATIONS**

# Permanent Final Adoptions

## 710:70-7-8. Cigarette stamp tax rate for sales by federally-recognized Indian tribes and nations [REVOKED]

(a) ~~The tax rate set out in this Section is for packages of twenty (20) cigarettes. The rate for packages of twenty five (25) cigarettes is Twenty five percent (25%) greater than the rate for the twenty unit packages.~~

(b) ~~The New Unity Rate, applicable to cigarette sales made on the Indian country of a federally recognized Indian tribe or nation by that tribe or nation or its licensee is \$1.03 per pack. The tax rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Oklahoma Tax Commission.~~

## 710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations [REVOKED]

~~The terms "New Unity Compact" and "New Unity Rate" apply to compacts signed after July 1, 2013, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder:~~

- ~~(1) For little (class A) cigars: \$0.036 each~~
- ~~(2) For all other (class C) cigars: \$0.12 each~~
- ~~(3) For smoking tobacco: Eighty percent (80%) of the Factory List Price~~
- ~~(4) For chewing tobacco: Sixty percent (60%) of the Factory List Price~~

## 710:70-7-10. Calculation of probable demand for noncompacting federally recognized Indian tribes or nations

(a) **Purpose of rule:** The purpose of this rule is to provide the procedure necessary for the implementation of calculation of probable demand for Native American tax free stamps for each noncompacting tribe or nation resident in Oklahoma for cigarettes and other tobacco products, pursuant to 68 O.S. § 349.1., effective January 1, 2010.

(b) **Calculation of probable demand:** Probable demand shall be calculated in conformity with the requirements of 68 O.S. § 349.1.

(c) **Service of preliminary calculation of probable demand upon affected noncompacting tribes and nations:** Not less than seventy-five (75) calendar days prior to the first calendar day of each calendar year, the preliminary calculation of probable demand for cigarette and other tobacco products shall be served upon the governing authorities or other designated agent of each and every noncompacting tribe and nation, together with a copy of this Section. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(d) **Service of objections/dispute of preliminary calculation of probable demand by affected noncompacting tribes and nations:** Within thirty (30) calendar days from the date

of service of the preliminary calculation of probable demand, affected noncompacting tribes and nations may serve upon the Office of the General Counsel, Oklahoma Tax Commission, 120 North Robinson, Suite 2000 W, Oklahoma City, OK 73102 7801, any objections/dispute of the preliminary calculation of probable demand, together with any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence. Service shall be deemed complete upon placing of objections/dispute of the preliminary calculation of probable demand, together with supporting verifiable evidence in the first class mail, postage prepaid, addressed to the Office of the General Counsel, Oklahoma Tax Commission at the above address.

(e) **Failure to file objection/dispute of preliminary calculation of probable demand.** If, within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand upon an affected tribe or nation, that tribe or nation has failed to file its objection/dispute to the preliminary calculation served upon it, that preliminary calculation shall become the final calculation, final and nonappealable.

(f) **Final calculation of probable demand.** If an affected tribe or nation timely files its objection/dispute to the preliminary calculation of probable demand for that affected tribe or nation and furnishes supporting verifiable information pursuant to (d) of this Section, said objection/dispute, together with supporting verifiable evidence shall be considered, and a final calculation of probable demand issued and served within fifteen (15) calendar days from the date of service of said objection/dispute. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(g) **Timely filing of objections/dispute of final calculation of probable demand.** If, within fifteen (15) calendar days from the date of service of the final calculation of probable demand upon an affected tribe or nation, that tribe or nation has timely filed its objection/dispute to the final calculation served upon it, the matter of the final calculation of probable demand shall proceed as a protested matter, pursuant to the provisions of the OAC 710:1-5-21 through OAC 710:1-5-49.

(h) **Final calculation of probable demand to be used while any timely protest and appeal of the final calculation of probable demand is pending.** If an affected tribe or nation files a timely objection/dispute to the final calculation served on it, cigarettes and other tobacco products may be obtained, on a monthly basis, with entitlement based upon 1/12th of the final calculated probable demand for cigarettes and other tobacco products. Provided, however, at the option of the affected tribe or nation, it may obtain cigarettes and other tobacco products each month, based upon 1/12th of the final calculated probable demand, plus not more than an additional twenty five percent (25%) of 1/12th of the final calculated probable demand for cigarettes and other tobacco products. In the event an affected tribe or nation elects to obtain such an additional amount of untaxed cigarettes and other tobacco products, entitlement to request those additional amounts shall cease when the total of

cigarettes and other tobacco products obtained in a calendar year equals the final calculation of probable demand for that calendar year.

(i) **Final determinations of the final calculated probable demand appealable pursuant to 68 O.S. § 225.** Final orders of the Oklahoma Tax Commission pursuant to 68 O.S. § 349.1 and this Section shall be appealable to the Oklahoma Supreme Court, as a matter of right, pursuant to 68 O.S. ~~§225.A225~~.

*[OAR Docket #19-566; filed 6-6-19]*

**TITLE 710. OKLAHOMA TAX  
COMMISSION  
CHAPTER 85. VARIOUS TAX INCENTIVES**

*[OAR Docket #19-567]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Oklahoma Quality Jobs Program  
710:85-1-10 [AMENDED]
- Subchapter 3. Saving Quality Jobs Program [REVOKED]  
Part 1. General Provisions [REVOKED]  
710:85-3-1 [REVOKED]  
710:85-3-2 [REVOKED]
- Part 3. Premium Payment Program [REVOKED]  
710:85-3-30 [REVOKED]  
710:85-3-31 [REVOKED]  
710:85-3-32 [REVOKED]  
710:85-3-33 [REVOKED]  
710:85-3-34 [REVOKED]  
710:85-3-35 [REVOKED]  
710:85-3-36 [REVOKED]  
710:85-3-37 [REVOKED]  
710:85-3-38 [REVOKED]
- Part 5. High Impact Projects [REVOKED]  
710:85-3-50 [REVOKED]  
710:85-3-51 [REVOKED]  
710:85-3-52 [REVOKED]  
710:85-3-53 [REVOKED]  
710:85-3-54 [REVOKED]  
710:85-3-55 [REVOKED]  
710:85-3-56 [REVOKED]  
710:85-3-57 [REVOKED]
- Subchapter 7. Oklahoma Film Enhancement Rebate Program  
710:85-7-3 [AMENDED]
- Subchapter 9. Oklahoma Quality Investment Act  
710:85-9-2 [AMENDED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. § 203

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**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Subchapter 3 *Saving Quality Jobs Program* has been revoked. Senate Bill 897 [Second Regular Session of the 56<sup>th</sup> Legislature, 2018], repealed the Saving Quality Jobs Act.

Section 710:85-7-3 has been amended to update a statutory citation and implement the provisions of House Bill 2344 [First Regular Session of the 56<sup>th</sup> Legislature, 2017], which amended the *Compete with Canada Film Act* by reducing the maximum annual fiscal year rebate from \$5 Million to \$4 Million effective for FY18. [68:3624]

Sections 710:85-1-10 and 710:85-9-2 have been amended to update statutory citations.

**CONTACT PERSON:**

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM**

**710:85-1-10. Limitation on incentive payments**

(a) **Ten year limitation from initial claim.** No claim for an incentive payment shall be honored if made for a period later than ten (10) years after the quarter for which the qualified establishment's first claim was made.

(b) **Ceiling for total payments limited to "estimated net direct state benefits."** No claim for an incentive payment shall be honored if payment and other incentive payments made to the qualified establishment exceeds the "estimated net direct state benefits" established by the Oklahoma Department of Commerce except for establishments subject to 68 O.S. ~~§3603(A)(6)(d)3603~~.

**SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM [REVOKED]**

**PART 1. GENERAL PROVISIONS [REVOKED]**

**710:85-3-1. Purpose [REVOKED]**

~~The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to 68 O.S. §§3701 through 3712, the Saving Quality Jobs Act.~~

# Permanent Final Adoptions

## 710:85-3-2. Definitions [REVOKED]

In addition to terms defined in Sections 3603 and 3703 of Title 68 of the Oklahoma Statutes and in 710:85-1-2 of the *Oklahoma Administrative Code*, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**At risk jobs**" means, in addition to the definition found in the Saving Quality Jobs Act, 68 O.S. §3703, those jobs recognized as "at risk jobs", by the Oklahoma Department of Commerce.

"**High impact project**" means one wherein an establishment, qualified under the Oklahoma Quality Jobs Program Act, 68 O.S. §§3602-3609, and approved by the Oklahoma Department of Commerce, provides a number of new direct jobs equal to, or greater than, one percent (1%) of the total labor force of the county in which the establishment is located.

## PART 3. PREMIUM PAYMENT PROGRAM [REVOKED]

### 710:85-3-30. Procedure upon qualification; reporting [REVOKED]

(a) **Procedures upon initial qualification.** Upon receipt of each approved application for incentive payments from the Department and notification of the start date from the qualified establishment, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A return shall be filed for each period following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the period. [See: 68 O.S. §2385.1 et seq., OAC 710:90-1-1 through 710:90-7-2]

### 710:85-3-31. Audits; auditors [REVOKED]

(a) **Reports subject to audit.** The returns filed pursuant to the requirements of the Saving Quality Jobs Act and the Rules promulgated thereunder shall be accepted, as filed, by the Commission, subject to audit.

(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any qualified establishment. [See: 68 O.S. §206]

(c) **Duty to comply and cooperate with examination.** It shall be the duty of every qualified establishment and every director, officer, or employee of every qualified establishment to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (b) of this Section.

### 710:85-3-32. Qualified establishments are employers [REVOKED]

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [See: 68 O.S. §2385.1 et seq. and 710:90-1-1 through 710:90-7-2]

### 710:85-3-33. Transfers to Saving Quality Jobs Premium Payment Fund [REVOKED]

Each month the Commission shall transfer from income tax withholding collected, to the Saving Quality Jobs Premium Payment Fund ("Fund"), the sum total of the premium net benefit rate multiplied by the gross payroll for each qualified establishment.

### 710:85-3-34. Procedure for filing claim, verification, payment, protest [REVOKED]

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Actual number of new direct jobs or at risk jobs during period of claim;
- (5) Gross payroll of new direct jobs or at risk jobs during period of claim;
- (6) Premium benefit rate; and
- (7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [See: 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** The qualified establishment whose claim has been approved will receive the amount claimed for the "Saving Quality Job" premium payment and the "Quality Job" incentive payment in one warrant. The combined premium payment and quality job payment cannot exceed five percent (5%) of the gross payroll of the establishment.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission:

- (1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

- (A) a statement of action as determined by the Commission;

- (B) a statement of the qualified establishment's disagreement with such action; and
- (C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Office of the Administrative Law Judges set out in 710:1-5-21 through 710:1-5-49.

**710:85-3-35. Disclosure of information [REVOKED]**

The Commission may, upon request, disclose the name of the qualified establishment that has received premium payment(s) and the amount of payment(s) received.

**710:85-3-36. Limitations [REVOKED]**

(a) ~~Limitations on the number of "at risk jobs".~~ The number of "at risk" jobs, for purposes of this Subchapter, shall not exceed the number of new direct jobs. Nor shall "at risk" jobs, for purposes of this Subchapter, exceed Two Hundred (200) jobs for any single establishment.

(b) ~~Three year limitation from initial claim.~~ No claim for a premium payment shall be honored if made for a period later than three (3) years after the quarter for which the qualified establishment's first claim was made.

(c) ~~Ceiling for total payments limited to "estimated net direct state benefits".~~ No claim for a premium payment shall be honored if the payment exceeds twenty percent (20%) of the "estimated net direct state benefits" established by the Oklahoma Department of Commerce.

**710:85-3-37. Premium payments not available to delinquent tax reporters/remitters [REVOKED]**

No premium payment will be made to any qualified establishment which is delinquent in the filing of any state tax return or report or which has an established liability for any state tax, until the delinquent report(s) or return(s) is filed and established liability paid.

**710:85-3-38. Cessation or suspension of premium payments and incentive payments [REVOKED]**

(a) ~~Cessation of incentive payments.~~ The Commission will cease incentive payments when the total payments for the Saving Quality Jobs Premium Fund and the High Impact Projects Premium Fund reaches Two Million Five Hundred Thousand Dollars (\$2,500,000.00) per fiscal year.

(b) ~~Suspension.~~ The Commission shall suspend the incentive payments if the criteria outlined in this Subchapter are not met.

**PART 5. HIGH IMPACT PROJECTS [REVOKED]**

**710:85-3-50. Qualifications for establishment [REVOKED]**

(a) ~~Initial qualification.~~ To qualify for the incentive payments under the terms of this Subchapter, an establishment must meet qualification as specified in the Quality Jobs Act, and have an annual gross payroll of at least One Million Dollars (\$1,000,000.00), but less than Two Million Five Hundred Dollars (\$2,500,000.00).

(b) ~~New Direct Jobs.~~ "New direct jobs" must be equal to or greater than one percent (1%) of the total labor force of the county in which the establishment is located.

**710:85-3-51. Procedures upon qualification [REVOKED]**

(a) ~~Procedures upon initial qualification.~~ Upon receipt of each approved incentive offer from the Oklahoma Department of Commerce and notification of start date from the qualified establishment, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) ~~Reports required.~~ The reports, on forms prescribed by the Commission, shall be filed quarterly.

**710:85-3-52. Transfers to High Impact Projects Payment Fund [REVOKED]**

Each month the Commission shall transfer from income tax withholding collected, to the High Impact Projects Fund ("Fund"), the sum total of two and one half percent (2½%), multiplied by the gross payroll of each qualified establishment for new direct jobs.

**710:85-3-53. Disclosure of information [REVOKED]**

The Commission may, upon request, disclose the name of the qualified establishments that have received high impact project incentive payment(s) and the amount of payment(s) received.

**710:85-3-54. Limitations [REVOKED]**

(a) ~~Limitations on the number of "at risk jobs".~~ The number of "at risk" jobs, for purposes of this Subchapter, shall not exceed the number of new direct jobs. Nor shall "at risk" jobs, for purposes of this Subchapter, exceed Two Hundred (200) jobs for any single establishment.

(b) ~~Six year limitation from initial claim.~~ No claim for an incentive payment shall be honored if made for a period later than six (6) years after the quarter for which the qualified establishment's first claim was made.

(c) ~~Claim period limited if minimum payroll amount not met.~~ The claim period set out in (b) of this Section shall be further limited to three (3) years from the date of the initial qualifying quarter if the minimum annual payroll of One Million

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Dollars (\$1,000,000.00) is not met during the period. Otherwise, the claims period shall be six (6) years, and there is no ceiling as to the amount received by the qualified establishment.

### 710:85-3-55. Incentive payments not available to delinquent tax reporters/remitters [REVOKED]

~~No incentive payment will be made to any qualified establishment which is delinquent in the filing of any state tax return or report or which has an established liability for any state tax until the delinquent report(s) or return(s) is filed and established liability paid.~~

### 710:85-3-56. Cessation or suspension of premium payments and incentive payments [REVOKED]

~~(a) **Cessation of incentive payments.** The Commission will cease incentive payments when the total payments for the Saving Quality Jobs Premium Fund and the High Impact Projects Premium Fund reaches Two Million Five Hundred Thousand Dollars (\$2,500,000.00) per fiscal year.~~

~~(b) **Suspension.** The Commission shall suspend the incentive payments if the criteria outlined in this Subchapter are not met.~~

### 710:85-3-57. Qualified establishment may protest suspension of payments [REVOKED]

~~The following procedures shall apply if the Commission ceases or suspends a qualified establishment's payment(s):~~

~~(1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:~~

~~(A) a statement of action as determined by the Commission;~~

~~(B) a statement of the qualified establishment's disagreement with such action; and~~

~~(C) supporting documentation relied on by the qualified establishment in support of its claim.~~

~~(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.~~

~~(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Office of the Administrative Law Judges set out in 710:1-5-21 through 710:1-5-49.~~

## SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

### 710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357~~(21)~~; and,

(2) The production company has filed or will file any Oklahoma tax return or tax document which may be required by law.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund" on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed ~~Five~~Four Million Dollars (\$~~5,000,000.00~~\$4,000,000.00). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

## SUBCHAPTER 9. OKLAHOMA QUALITY INVESTMENT ACT

### 710:85-9-2. Definitions

In addition to terms defined in 68 O.S. § 4103, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Capital costs"** means costs incurred by a qualified establishment for land, buildings, improvements to buildings, fixtures and for machinery, equipment, and other personal property used in and for the manufacturing process with respect to its manufacturing site in Oklahoma and specified in a quality investment agreement.

**"Commission"** means the Oklahoma Tax Commission.

**"Department"** means the Oklahoma Department of Commerce.

**"Manufacturing site"** means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer. [68 O.S. ~~Supp. 2004~~, § 1352~~(45)~~]

**"Qualified establishment"** means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

"Qualified investment agreement" means an agreement between a qualified establishment and the Department for a period not to exceed 5 years for the purpose of computing the total incentive payment amount.

"Start date" means the date on which an establishment may begin accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement.

[OAR Docket #19-567; filed 6-6-19]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #19-568]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

710:90-1-5 [AMENDED]

710:90-1-6 [AMENDED]

710:90-1-7 [AMENDED]

710:90-1-11 [AMENDED]

Subchapter 3. Returns and Payments

710:90-3-10 [AMENDED]

AUTHORITY:

68 O.S. §§ 203,2369, 2385.9, and 2385.15; Oklahoma Tax Commission

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710:90-1-5 [AMENDED]

710:90-1-6 [AMENDED]

710:90-1-7 [AMENDED]

710:90-1-11 [AMENDED]

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n/a

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Sections 710:90-1-5, 710:90-1-6, 710:90-1-7, and 710:90-1-11 have been amended in response to the release of an updated W-4 by the Internal Revenue Service which reflects this year's revised tax rates and brackets.

Section 710:90-3-10 has been amended to clarify existing policy that non-resident royalty interest owners who are pass-through entities shall

allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income. [68:2369]

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-5. ~~Employee exemption certificates and~~Employee's withholding allowancesallowance certificate

The marital status and number of withholding allowances an employee may claim in determining Oklahoma Income Tax to be withheld shall be the same as that claimed on a valid ~~employee exemption~~employee's withholding allowance certificate (Federal Form W-4) as required by the Internal Revenue Service, provided Federal Form W-4 was executed prior to March 1, 2018. If changes to Oklahoma withholding should be made, or employment begins after February 28, 2018, employees shall submit a completed Oklahoma Form W-4 to their employer, except for certain special or additional allowances an employee may claim. An employer should advise an employee to decrease the number of allowances claimed on Federal Form W-4 by one for Oklahoma withholding purposes for each of the following allowances claimed to assist in the computation of adequate tax to be withheld:

- (1) Any special allowance claimed by a single person with only one job;
(2) Any special allowance claimed by a married person whose spouse is not working;
(3) Any special allowance claimed by a person with two jobs where only one job pays more than \$2,500.00;
(4) Any special allowance claimed by a married person with two jobs or a working spouse if only one job paid more than \$2,500.00; or;
(5) Any additional allowance claimed by each person entitled to Head of Household status.

710:90-1-6. Supplemental wages

(a) Treatment of supplemental wages combined with regular wages. An employer who pays supplemental wages combined with regular wages and does not specify or separate the amount of each should withhold Income Tax as if the total payment were a single payment for a regular payroll period. Supplemental wages include bonuses, commissions, overtime pay, vacation pay, sick leave pay, back pay, retroactive wage increases or payment for nondeductible moving expenses.

(b) Treatment of supplemental wages paid separately or combined in single payment. Supplemental wages which are paid separately or combined in a single payment and the

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amount of each is specified, are subject to withholding according to one of the following methods:

- (1) If ~~you withhold tax~~ was withheld from the employee's regular wages, use one of these two methods for supplemental wages:
  - (A) Withhold at the highest applicable rate set out in 68 O.S. Section 2355(B)(1) for Oklahoma Income Taxes for the taxable year; or
  - (B) Add the supplemental and regular wages for the most recent payroll period. Calculate the tax as if the total constitutes a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.
- (2) If tax was not withheld from an employee's regular wages, the provisions set out in (1)(B) of this subsection should be used. This situation would occur, for example, when the value of the employee's withholding allowances claimed ~~on Form W-4~~ is more than the wages.
- (c) **Treatment of overtime, vacation, and sick pay.** Overtime pay, vacation pay, and sick pay are subject to Withholding Tax as if a regular wage payment. If paid in addition to the regular wage, it is considered a supplemental wage.

### 710:90-1-7. Computation of tax to be withheld

- (a) Every employer making payment of wages subject to withholding shall deduct and withhold from the wages paid each employee, a tax in an amount determined in accordance with the table fixing graduated rates of tax to be withheld, unless otherwise provided. However, if the computer formula is used, the amounts for the ~~federal~~ personal exemption and for the ~~federal~~ Oklahoma standard deduction may be updated as necessary annually to coincide with amounts allowed by the Internal Revenue Service for the ensuing tax year.
- (b) Available to all employers filing Withholding Tax Returns are withholding tables:
  - (1) An optional table for married persons who file joint returns and both spouses work; and,
  - (2) A general table for all other categories of filing status. The Oklahoma Withholding Tax tables are based on gross wages and the standard deduction.
- (c) If an employee determines that his or her Oklahoma Income Tax liability for the year will be more than the amount to be withheld, the employee may authorize an employer, if agreed, to withhold more tax than is required. This must be in writing and may be in any form.
- (d) Married persons with working spouses may elect to have Oklahoma Income Tax withheld based on the optional tables devised for such persons.
- (e) An employer has a duty to inform all employees of the measures and options available to ensure sufficient tax is withheld.
- (f) If an employee fails to provide the employer ~~a Form W-4~~ an Oklahoma Form W-4, the employer must withhold tax as if the employee were a single person who has claimed no withholding allowances.

### 710:90-1-11. Records

- (a) Required records described in this Section shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the Commission to determine whether liability for tax is incurred, and if so, the amount thereof.
- (b) An employer must maintain required records for at least four years after the due date of such withholding tax for the return period to which the records relate, or the date the tax is paid, whichever is the later.
- (c) The specific records required to be kept are:
  - (1) The employer's identification number;
  - (2) Copies of all returns, reports, and other documents concerning Oklahoma Withholding Tax to include the business registration, employer's return of tax withheld, annual reconciliation and appropriate wage and tax statements;
  - (3) Copies of Internal Revenue Service Forms 940 and 941, Oklahoma Employers Quarterly Contribution Report (OESC) and Oklahoma Quarterly Wage Withholding Tax Return (OTC);
  - (4) The dates and amounts of Oklahoma Withholding Tax payments made and copies of cancelled checks;
  - (5) Each employee's name, address, occupation, social security number, and periods of employment;
  - (6) The total amount of and date of each wage payment and the period of time the payment covers;
  - (7) For each wage payment, the amount subject to withholding;
  - (8) The amount of Withholding Tax collected on each payment and the date it was collected;
  - (9) The employee's withholding allowance exemption certificate (Federal Form W-4 executed prior to March 1, 2018 or Oklahoma Form W-4) filed by each employee;
  - (10) Any agreement between the employer and the employee for the voluntary withholding of additional amounts of tax or of amounts which are not required to be withheld;
  - (11) A chart of accounts;
  - (12) Copies of filed Federal and State Income Tax Returns and supporting schedules; and
  - (13) Books of original entry, ledgers, and any other information necessary to substantiate the amount of tax withheld and paid or to support any reason the employer may have for not withholding Income Tax.

## SUBCHAPTER 3. RETURNS AND PAYMENTS

### 710:90-3-10. Income tax withholding - oil and gas royalties

- (a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount

paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is five percent (5%) with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "**remitter**" means any person who distributes revenue to royalty interest owners; "**gross royalty**" means that amount which is reported for federal income tax purposes on IRS Form 1099; "**non-resident royalty interest owner**" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "**oil**" and "**gas**" shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Nonresident Royalty Withholding Tax Return and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

- (1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;
- (2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;
- (3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and
- (4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

(f) If the non-resident royalty interest owner is a pass-through entity, the pass-through entity shall allocate the non-resident royalty withholding to its partners, shareholders or members in the same manner as the royalty income.

[OAR Docket #19-568; filed 6-6-19]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY**

[OAR Docket #19-569]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 9. Professional Licensing Compliance Review  
710:95-9-3 [AMENDED]
- Subchapter 11. State Employees Compliance Review  
710:95-11-3 [AMENDED]
- Subchapter 21. Quality Events  
710:95-21-2 [AMENDED]  
710:95-21-4 [AMENDED]  
710:95-21-5 [AMENDED]  
710:95-21-6 [AMENDED]  
710:95-21-8 [AMENDED]  
710:95-21-9 [AMENDED]  
710:95-21-10 [AMENDED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. §§ 203 and 4309

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n/a

**GIST / ANALYSIS:**

Subchapter 21 *Quality Events* has been amended to reflect the changes made to the Quality Event Incentive Act, 68 O.S. §§ 4301 et seq., pursuant to the adoption by the Oklahoma Legislature of SB 1252 [2018] effective July 1, 2018 which modifies the qualification procedures for quality event recognition along with the determination of incremental sales tax occurring as a result of an event.

Sections 710:95-9-3 and 710:95-11-3 have been amended to update contact information.

**CONTACT PERSON:**

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

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## SUBCHAPTER 9. PROFESSIONAL LICENSING COMPLIANCE REVIEW

### 710:95-9-3. General provisions

(a) **Information to be provided.** Each licensing entity shall provide to the Commission a list of all its licensees, along with social security numbers and other identifying information that may be required by the Commission. The list, in the form of a complete renewal file, should be provided to the Commission the month following the license renewal cycle. [See: 68 O.S. § 238.1(B)]

(b) **Requisite lead time and format.** Every licensing entity shall provide the information described in ~~subsection (a) of this Section~~ in a timely manner, so there is a minimum of six months lead time within which to research and resolve any compliance issues with licensees. [See: 68 O.S. § 238.1(B)]

(c) **Contact information.** The Commission's Professional Licensing Compliance Unit can be reached by phone at (405) 522-6800 ~~or by E-mail at license-review@tax.ok.gov.~~

## SUBCHAPTER 11. STATE EMPLOYEES COMPLIANCE REVIEW

### 710:95-11-3. General provisions

(a) **Information to be provided.** The Oklahoma Office of Management and Enterprise Services shall provide to the Tax Commission a list of all state employees, along with social security numbers and other identifying information that may be required by the Commission. The list should be provided to the Commission not later than August 1 of each year and shall include all employees of the state as of the preceding July 1. [See: 68 O.S. § 238.2(B)]

(b) **Contact information.** The Commission's State Employee Compliance Unit can be reached by phone at (405) 522-6800 ~~or by Email at employees-review@tax.ok.gov.~~

## SUBCHAPTER 21. QUALITY EVENTS

### 710:95-21-2. Definitions

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

**"Certified sponsor"** means an entity or organization authorized to promote and conduct a quality event, which is incurring expenses for the promotion of such event to be conducted within the corporate limits of an eligible municipality or an unincorporated area within a county.

**"Commission"** means the Oklahoma Tax Commission.

~~**"Economic impact study"** means a study, which includes:~~

- ~~(A) A description of the quality event,~~
- ~~(B) Information regarding the site selection process for the quality event,~~
- ~~(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event,~~

~~(D) An estimate of the total gross sales made by vendors during any period of time during which no quality event activity occurs,~~

~~(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event,~~

~~(F) The general economic impact likely to occur as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and~~

~~(G) Any additional information the Oklahoma Tax Commission may require.~~

**"Eligible local support amounts"** means:

(A) Any payment made by a local government entity or transfer of monies from the general fund or transfer of tax revenues derived from a locally imposed tax to a certified sponsor for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event, or

(B) Any direct payment made by a certified sponsor to a for-profit or nonprofit entity, other than the host community, for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event.

**"Event history"** means:

(A) Historical information on the event including past locations of the event,

(B) A description of previous attempts by the host community to secure the event,

(C) Information regarding attempts by other communities to recruit the event, and

(D) If applicable, the competitive bidding process for securing the event by the host community.

**"Host community"** means any county, incorporated city or town, or any combination of counties, incorporated cities or towns of the state which are authorized by their respective governing bodies to host or assist in the presentation of a quality event.

**"Incremental sales tax revenue"** means, the amount of additional state sales tax revenue as a result of the quality event, as determined ~~by an economic impact study verified~~ by the Oklahoma Tax Commission based on actual documentation of taxable transactions occurring as a result of the quality event.

**"New event"** means a quality event which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held.

**"Quality event"** means:

(A) A new event or a meeting of a nationally recognized organization or its members,

(B) A new or existing event that is a national, international or world championship, or

(C) A new or existing event that is managed or produced by an Oklahoma-based national or international organization.

**"Recurring event"** means a quality event which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

"State sales tax revenue" means the proceeds from the state sales tax levy imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes upon taxable transactions occurring as a result of the quality event, as determined by ~~an economic impact study verified by the Oklahoma Tax Commission based on actual documentation.~~

"Vendors" means those persons or business entities making taxable sales of tangible personal property or services as a result of the quality event, as determined by ~~an economic impact study verified by the Oklahoma Tax Commission based on actual documentation~~ and, unless the context otherwise requires, shall have the same meaning as defined by Section 1352 of Title 68 of the Oklahoma Statutes.

**710:95-21-4. Quality event approval and application requirements**

(a) **Application for approval.** Within thirty (30) days of the adoption date of the ordinance or resolution designating a quality event, which must be adopted not later than six (6) months prior to the initial date of the designated quality event, the host community must submit a written request for recognition as a quality event to the Tax Policy Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194. The postmark date of the written request for recognition as a quality event is deemed to be its date of delivery.

(b) **Application requirements.** The application for recognition must include the following:

(1) **Ordinance or resolution.** A copy of the ordinance or resolution designating the quality event; ~~and~~

(2) ~~Economic impact study.~~ The economic study must include the following information:

~~(A) A description of the quality event.~~

~~(B) Information regarding the site selection process for the quality event.~~

~~(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event which specifically categorizes the type of expenses, such as advertising, anticipated to be incurred along with the estimated costs associated therewith.~~

~~(D) An estimate of the total gross sales made by vendors during any period of time during which no quality event activity occurs.~~

~~(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event.~~

~~(F) The general economic impact likely to occur as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and~~

(3) **Event history.** The event history must include the following information:

(A) *Historical information on the event including past locations of the event,*

(B) *A description of previous attempts by the host community to secure the event,*

(C) *Information regarding attempts by other communities to recruit the event, and*

(D) *If applicable, the competitive bidding process for securing the event by the host community.*

(c) **Ineligibility for quality event recognition.** The Tax Commission shall not consider any application for quality event recognition which is not submitted within the statutory timeframe outlined in this Section.

**710:95-21-5. Tax Commission review and approval process**

(a) **Approval process.** Within sixty (60) days from receipt of the host community's request for quality event recognition, the Commission must approve or disapprove, in whole or in part, ~~the economic impact study submission and analysis of the required information. The Commission shall not approve any economic impact study for which the Oklahoma Department of Commerce has not recommended approval in accordance with subsection (c) of this Section.~~

~~(b) **Review and approval.** In order for the economic impact study to be approved, the Commission must determine whether the economic impact contains the elements required in Section 710:95-21-4(b)(2) and whether the information provided is validly documented and based on generally accepted economic and statistical standards used for purposes of similar studies.~~

~~(c) **Assistance of the Oklahoma Department of Commerce.** Upon receipt of an economic impact study, the Tax Policy Division of the Commission must forward same to the Commerce Department for review and recommendation as to whether the economic impact study should be approved or disapproved.~~

~~(d) **Order disapproving request.** An order of the Commission disapproving a host community's economic impact study submission is not an appealable order under Section 225 of Title 68 of the Oklahoma Statutes.~~

**710:95-21-6. Determination of eligible local support amounts**

(a) **Outline and required documentation.** Within thirty (30) days from the conclusion of the quality event the host community must submit to the ~~Management Services Division~~ Tax Policy Division of the Commission at 2501 N. Lincoln Blvd, Oklahoma City, Oklahoma 73194, an outline with supporting billing and payment information detailing the total amount of eligible local support amounts for purposes of determining the amount of incremental state sales tax revenue that may be paid to the host community in which a quality event occurred.

(b) **Payment verification.** The Commission must verify the amount of eligible local support amounts prior to making any payment to the host community.

**710:95-21-8. Verification of incremental state sales tax revenue**

Upon receipt, the Tax Commission will review the documentation submitted pursuant to Section 710:95-21-7 to verify additional state sales tax revenue, as determined by the ~~economic impact study~~ actual documentation, which was collected as a result of the event.

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## 710:95-21-9. Manner of determining payment

The Commission must compare the total amount of eligible local support amounts with the total amount of incremental state sales tax revenues remitted by vendors, such revenues to be established ~~through the economic impact study based on actual documentation~~. Payments made to the host community are governed by the following determinations:

- (1) If a determination is made that the total amount of incremental state sales tax revenues is zero, no payment shall be made to a host community.
- (2) If a determination is made that the total amount of incremental state sales tax revenues is greater than zero, but less than the total amount of eligible local support amounts, a payment shall be made subject to the limitation of the payment cap provided for in Section 710:95-21-10(b), to the host community of the quality event in an amount equal to the incremental state sales tax revenues.
- (3) If a determination is made that the total amount of incremental state sales tax revenues is at least equal to the amount of eligible local support amounts, a payment shall be made, subject to the limitation of the payment cap provided in Section 710:95-21-10(b), to the host community in which the quality event occurs in an amount equal to, but not greater than, the eligible local support amounts.

## 710:95-21-10. Incentive payment limitations

- (a) **Sources other than incremental state sales tax revenues.** No payment shall be made to any host community from a source other than the incremental state sales tax revenues, if any, derived from state sales tax remittances of vendors as a result of the quality event, as determined by ~~an economic impact study verified by the Oklahoma Tax Commission~~.
- (b) **Payment threshold.** No payment shall be made to any host community in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) for a single quality event regardless of the amount of eligible local support paid by the host community.
- (c) **Local sales tax revenues.** No proceeds from the levy of any sales tax imposed by a county or a municipality shall be affected by the provisions of this Subchapter and the proceeds from any such levy shall be collected and remitted as required by the Oklahoma Sales Tax Code. The distribution of the revenues shall be made in accordance with all applicable requirements of law with respect to such sales tax levies.

[OAR Docket #19-569; filed 6-6-19]

## TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #19-536]

**RULEMAKING ACTION:**  
PERMANENT final adoption

### RULES:

- 715:1-1-1. Purpose [AMENDED]
- 715:1-1-10. Grievances and complaints [AMENDED]
- 715:1-1-13. Change of address, name or district [AMENDED]
- 715:1-1-19. Appointment of non-voting Trustee [AMENDED]

### AUTHORITY:

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

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

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n/a

### GIST/ANALYSIS:

715:1-1 is being amended to make consistent the reference to "TRS" throughout the remainder of the rules.

715:1-1-10 is being amended per 2017 legislation to reflect a quorum (eight votes) is necessary to approve any motion, resolution or order under consideration on a grievance appeal and to correct typos and make consistent the reference to "TRS"

715:10-1-13 is being added to remove references to a TRS form number that no longer exists.

715:10-1-19 is being amended per 2017 legislation to reflect the Board is now composed of fourteen voting members and to remove out of date language regarding the initial appointment of the nonvoting member.

### CONTACT PERSON:

Phyllis Bennett, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK, 73105, 405-521-4745.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

### 715:1-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq, and for establishing and explaining the internal and external administrative operations of the Teachers' Retirement System ("TRS").

### 715:1-1-10. Grievances and complaints

Grievances and complaints are usually settled by correspondence or informal conference between the member or beneficiary and TRS ~~the staff of the Teachers' Retirement System~~.

- (1) Any interested person with a grievance ~~which that~~ cannot be settled in this manner may appeal the decision

of the staff to the ~~executive~~ Executive-director ~~Director~~ of ~~TRS the Teachers' Retirement System~~. Request for an informal hearing before the ~~executive~~ Executive-director ~~Director~~ must be in writing and include a clear statement of the grievance or complaint. The ~~executive~~ Executive-director ~~Director~~ will provide a written response within thirty (30) days, stating the official position of Teachers' Retirement in the matter before appeal. The response will either grant or deny the appellant's request. If denied, the ~~executive~~ Executive-director ~~Director~~ shall provide to the member the applicable statutes, rules and administrative procedures used in reaching a decision to deny the appeal of the member. "Interested person" means any member of ~~TRS the Teachers' Retirement System~~; any beneficiary of a member; any retiree of ~~TRS the Teachers' Retirement System~~; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(2) Any decision of the ~~executive~~ Executive-director ~~Director~~ may be appealed to the Board of Trustees of the Teachers' Retirement System. The member must appeal the decision of the ~~executive~~ Executive-director ~~Director~~ within sixty (60) days of receipt of notification of denial by the ~~executive~~ Executive-director ~~Director~~.

(3) All cases of appeals to the Board of Trustees will be assigned to an administrative hearing judge, who will conduct a hearing and prepare a proposed order ~~to~~ for the Board of Trustees. The ~~executive~~ Executive-director ~~Director~~ shall appoint the administrative hearing judge from a list of individuals previously employed by the Board of Trustees to act in this role. Administrative ~~Operations~~ hearings shall be conducted in the offices of ~~TRS the Teachers' Retirement System~~ at a time and date agreed to by the parties. ~~It is expected that any~~ Any party to the hearing ~~will~~ shall provide timely notice to the other parties if a delay or failure to appear is anticipated.

(4) Hearings will be conducted under the provisions of the Administrative Procedures Act [75 O.S. 250 et. seq.]. Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved. The administrative hearing judge will have the authority to conduct the hearing and rule on the admissibility of all evidence. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he or she represents. Upon the completion of the hearing, the administrative hearing judge shall afford the appellant the opportunity to present a written brief and arguments to be included as part of the record. Legal counsel for ~~TRSTeachers' Retirement~~ shall be provided an equal opportunity to respond to appellant's written brief and arguments if requested. Once all evidence, arguments and briefs are received by the administrative hearing judge the record shall be closed.

(5) At the close of the hearing, the administrative hearing judge shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. This

proposed order shall include findings of fact, based exclusively on the evidence and on matters officially noted in the record of the hearing, conclusions of law and a recommended order to the Board of Trustees. A copy of this proposed order shall be provided to all parties by the ~~executive~~ Executive-director ~~Director~~.

(6) The ~~member~~ interested parties shall have the right to file a written statement outlining any objections, exceptions and/or arguments ~~for~~ he ~~desires~~ the Board of Trustees to consider in its consideration of the hearing judge's proposed order. This statement must be filed with ~~TRS the executive-director~~ within twenty (20) days of receipt of the hearing judge's proposed order. No additional evidence or materials may be introduced with the written statement ~~by the member which were not presented at the hearing~~. The ~~executive~~ Executive-director ~~Director~~ and/or TRS staff may prepare a written response in rebuttal to the ~~member's~~ interested party's statement. A copy of any response by TRS will be provided to all interested parties ~~the member~~ at least ten (10) days prior to the time the ~~member's~~ appeal is scheduled for consideration by the Board of Trustees. The ~~member~~ interested parties may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

(7) The ~~executive~~ Executive-director ~~Director~~ may, prior to submitting the hearing officer's report to the Board of Trustees, settle any grievance or complaint in a manner agreeable to the ~~appellant~~ interested parties. In settling any grievance the ~~executive~~ Executive-director ~~Director~~ shall not exceed the authority previously granted to him or her by the Board of Trustees. The ~~executive~~ Executive-director ~~Director~~ shall report to the Board of Trustees any settlement which occurs after the hearing officer's report is filed.

(8) Consideration of the ~~member's~~ interested party's case will be scheduled before the Board of Trustees as soon as possible after the proposed order and any additional written materials have been filed with ~~TRS the Board~~ in accordance with this section. Unless mutually agreed to by all parties, no hearing before the Board will be scheduled within ten (10) ~~working~~ business days of such filings.

(9) At the meeting at which the Board of Trustees will consider the proposed order, the ~~member~~ interested parties will be afforded an opportunity to make a brief statement to the Board concerning the facts and any arguments he/she wishes to present and will be allowed to respond to questions from Trustees. Failure of ~~an~~ the ~~member~~ interested party to appear at the Board hearing without prior notification will result in the member relinquishing his/her right to be heard by the Board. If such absence was unavoidable, the interested party ~~member~~ may petition the Board for a rehearing. The Chairman of the Board of Trustees will have final authority to set the amount of time any party may have to present information to the Board.

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(10) After consideration of all evidence and arguments, both oral and written, the Board will make a final determination on the proposed order. The Board of Trustees may accept, reject or accept as modified the proposed order. The Board may make its own conclusions and issue an order in concert with those findings;—or re-open the case and hear evidence themselves. If the Board decides to hear the case, it will determine whether to review the complete record, including a transcript of the original hearing conducted by the administrative hearing judge and all documentary evidence, or open the case to receive new evidence and testimony. As in all matters before the Board, ~~seven (7) votes are~~ a quorum, as required by 70 O.S. §17-106, is necessary to approve any motion, resolution or order under consideration. A copy of the Board's final order will be delivered via mail to ~~the member~~ all interested parties and his their representative representatives by ~~the executive director of TRS.~~

(11) Any ~~member~~ interested party receiving an adverse ruling from the Board retains certain rights under the Administrative Procedures Act. The interested party ~~member~~ may file an action for judicial review in District Court in Oklahoma County. Such action must be filed within thirty (30) days after the aggrieved party is notified of the Board's final order. The interested party member may also petition for a rehearing, reopening or reconsideration of the appeal by the Board. Such petition must be filed with ~~the executive director of TRS~~ within ten (10) days from the date of the Board's decision and must be based on 75 O.S. 317.

(12) The Administrative Procedures Act prohibits direct or indirect communications by interested parties ~~members~~ and/or the representatives of interested parties ~~members~~ with the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Board, except upon notice which provides an opportunity for all parties to participate. The Board of Trustees will not consider any evidence or statements made to them by members in connection with a pending appeal.

### 715:1-1-13. Change of address, name or district

When a member moves to a new address, or if there is a change of surname, TRS should be notified of such change in writing or via the ~~OTR~~ TRS Client Portal. Please include the new name, the former name and the Social Security number or ~~Client~~ Member ID number. This procedure also applies to retired members whose checks are directly deposited to their banking accounts. ~~Also, when~~ When an employee moves from one school district to another, the employee shall notify it is important that TRS using be notified of this change at once. the Personal Data Form TRS 1-A that may be secured for this purpose from the fiscal officer of the member's employer or from the TRS website.

### 715:1-1-19. Appointment of non-voting Trustee

(a) The Board of Trustees is composed of ~~thirteen (13)~~ fourteen (14) voting members and one (1) non-voting member

who is to be selected by a statewide organization representing retired educators under Section 17-106~~(m)~~ of ~~title~~ Title 70 of the Oklahoma Statutes. As there is the possibility that more than one statewide organization representing retired educators exists, ~~OTR~~ STRS shall employ an annual process to determine which such organization has the ability to make the non-voting trustee appointment.

(b) The term "Statewide organization representing retired educators" shall mean an entity primarily organized for the purpose of representing the interests of retired educators in this state and providing member benefits, as is defined in Section 17-122.1 of ~~title~~ Title 70 of the Oklahoma Statutes. Furthermore, the entity must have at least two hundred (200) retired educators in its membership who are also members of ~~OTR~~ STRS.

(c) ~~On September 15, 2014, any~~ Any organization that asserts that it meets the definition of a statewide organization representing retired educators shall make application to ~~TRS on a form supplied by OTRS,~~ to be recognized as the organization to make this selection. The ~~form~~ application shall be submitted with documentation that shows the legal status of the organization (corporation, association, other). The material submitted shall also provide documentation formally adopted by the organization demonstrating the organization meets the definition of a statewide organization representing retired educators and documentation formally adopted by the organization detailing the internal procedure by which the organization will select the candidate to be appointed to the Board of Trustees.

(d) The Board of Trustees shall decide which organization(s) meet the definition of an eligible organization ~~by November 1, 2014. If only one organization meets the definition of eligible organization, that organization shall follow its own governing documents to make the selection of the non-voting trustee, and provide notification of the appointment to OTRS in writing by December 10, 2014.~~

(e) Should more than one organization meet the definition of an eligible organization, the Board of Trustees shall maintain a register of eligible organizations and shall place the organizations meeting the definition on the initial register according to the membership number of the organizations, with the organization with the most members being listed first on the register, and the organization with the lowest number of members being listed last. The organization listed first on the register shall follow its own governing documents to make the selection of the non-voting trustee, and provide notification of the appointment to the ~~OTR~~ STRS in writing by December 10, 2014. By September 30 of every year thereafter every organization on the register must re-certify to the System ~~Board of Trustees~~ that it continues to meet the definition of statewide organization representing retired educators, and that it has at least two hundred (200) members who are retired educators. Any organization that fails to re-certify its eligibility or fails to meet the eligibility shall be stricken from the register by the System ~~Board~~ at the next scheduled board meeting. By November 1 of every year the System ~~Board~~ shall notify the next organization listed on the register of its entitlement to make the non-voting member appointment for the next calendar year, with notification to the ~~OTR~~ STRS of the name of

the appointed non-voting member in writing by December 10 of that year. This yearly procedure shall continue through the register sequentially until all organizations on the register have made an appointment to the Board of Trustees. Entitlement to make the appointment shall then return to the first organization listed on the register, and the procedure shall continue yearly in the same manner sequentially through the register.

(f) Any organization making application for eligibility and addition to the register after September 15, 2014, shall make application to TRS in the same manner described above. The Board shall decide by November 1 of the year in which the application is made if the organization meets the definition of an eligible organization. The organization shall then be added to the end of the register. In any year in which more than one organization is added to the register, ~~they~~ it shall be added according to the membership number of the organizations, with the organization with the most members being listed first on the register, and the organization with the lowest number of members being listed last.

(g) The term of the non-voting Trustee appointment made hereunder shall be one (1) calendar year, from January 1 to December 31.

*[OAR Docket #19-536; filed 6-4-19]*

**TITLE 715. TEACHERS' RETIREMENT SYSTEM  
CHAPTER 10. GENERAL OPERATIONS**

*[OAR Docket #19-537]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Service eligibility
  - 715:10-3-1. Requirements for creditable service [AMENDED]
- Subchapter 5. Establishing Other Service Credits
  - 715:10-5-4. Cost to purchase Oklahoma service [AMENDED]
  - 715:10-5-9. Re-establishing withdrawn service [AMENDED]
  - 715:10-5-15. Application for military service [AMENDED]
  - 715:10-5-25. Application for out-of-state service credit [AMENDED]
  - 715:10-5-35. Employer pick-up of ~~purchase of~~ service credit purchase [AMENDED]
  - 715:10-5-37. Incentive service credit [NEW]
- Subchapter 9. Survivor Benefits
  - 715:10-9-1. Return of contributions when death occurs before retirement [AMENDED]
  - 715:10-9-2. Death benefit when death occurs before retirement [NEW]
  - 715:10-9-6. Probate ~~Waivers~~ waivers [AMENDED]
  - 715:10-9-8. Beneficiary designation for death benefit [NEW]
- Subchapter 11. Withdrawal from Membership and Refund of Deposits
  - 715:10-11-1. Withdrawal from membership by an eligible person [AMENDED]
  - 715:10-11-7. Rollovers from ~~OTRS~~ TRS to other eligible retirement plans [AMENDED]
- Subchapter 13. Contributions for Membership Service
  - 715:10-13-3. Employee contribution rates [AMENDED]
  - 715:10-13-13. Contributions while receiving workers' compensation payments ~~from Workers' Compensation~~ [AMENDED]
- Subchapter 15. Service Retirement
  - 715:10-15-5. Date of retirement contract is binding; revocation of contract [AMENDED]
  - 715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP") [AMENDED]

- 715:10-15-10.1. "Pop-up" of Option 2 or Option 3 ~~Retirement~~ retirement Plans plans [AMENDED]
- 715:10-15-11. Designation of beneficiaries or joint annuitant for retirement options [AMENDED]
- 715:10-15-15. Disability retirement; application; effective date [AMENDED]
- 715:10-15-16. Review by Medical Board [AMENDED]
- Subchapter 17. Post-Retirement Employment
  - 715:10-17-13. Election to return to qualifying employment [AMENDED]
- Subchapter 25. Qualified Domestic Order
  - 715:10-25-2. Filing a qualified domestic order [AMENDED]

**AUTHORITY:**

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

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

March 6, 2019

**COMMENT PERIOD:**

January 16, 2019 through February 15, 2019

**PUBLIC HEARING:**

February 19, 2019

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February 27, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

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**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HRJ 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

715:10-3-1 is being amended to more accurately calculate service credit for both full-time and part-time employees and to make references to "TRS" consistent throughout the rules.

715: 10-5-4 is being amended to remove out-of-date language addressing the actuarially assumed interest rate for the purchase of service credit.

715:10-5-9 is being amended to make references to "TRS" consistent throughout the rules and to clarify procedure for re-establishing withdrawn accounts.

715:10-5-15 is being amended to clarify the documentation necessary to establish credit for military service.

715:10-5-25 is being amended to clarify the documentation necessary to establish credit for out-of-state service.

715:10-5-35 is being amended to reflect that TRS, not the Board, is responsible for establishing procedures for employer pick-up of purchase of service credit and to make references to "TRS" consistent throughout the rules.

715: 10-5-37 is being added to implement processes for the purchase of up to two years of incentive credit for employees of participating institutions within The Oklahoma State System of Higher Education as an amendment to 70 O.S. § 17-116.2B passed during the 2018 legislative session (SB 527).

715:10-9-1 is being amended to clarify the beneficiary designation must be on file with TRS prior to the member's death to be given effect and to reflect the current interest rate adopted by the Board for withdrawn accounts pursuant to 70 O.S. § 17-105.

715:10-9-2 is being reinstated following erroneously being revoked in 2012. This rule defines active "in-service" membership for qualification of the statutory \$18,000 death benefit for non-retired members.

715:10-9-6 is being amended to reflect the statutory change in the maximum amount for a probate waiver from \$5,000 to \$25,000 in 70 O.S. § 17-105(13).

715:10-9-8 is being added to clarify when a beneficiary designation may be changed by the member.

715:10-11-1 is being amended to reflect the current interest rate adopted by the Board for withdrawn accounts pursuant to 70 O.S. § 17-105 and to remove language regarding payment of interest that is duplicative with the statute.

715:10-11-7 is being amended to distinguish between a beneficiary and a joint annuitant.

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715:10-13-3 is being amended to remove language regarding the specific amount of contributions credit that is duplicative with the corresponding statute, 70 O.S. § 17-108.2.

715:10-13-13 is being amended to remove out-of-date language addressing the actuarially assumed earnings rate for contributions while receiving payments from workers' compensation.

715:10-15-5 is being amended to distinguish between a beneficiary and a joint annuitant.

715:10-15-7.2 is being amended to implement changes to the Education Employees Service Incentive Plan ("EESIP") passed during the 2018 legislative session (HB 2553) to clarify that only years of employment worked beyond normal retirement age and while working for a participating remitting entity are used to wear away capped service.

715:10-15-10.1 is being amended to distinguish between a beneficiary and a joint annuitant.

715:10-15-11 is being amended to distinguish between a beneficiary and a joint annuitant.

715:10-15-15 is being amended to implement changes to disability retirement in 70 O.S. § 17-105 (5) passed during the 2018 legislative session (HB 2553) to reflect the Medical Board, rather than the Board of Trustees, may approve disability retirement.

715:10-15-16 is being amended to implement changes to disability retirement in 70 O.S. § 17-105 (5) passed during the 2018 legislative session (HB 2553) to reflect the appeals process if the Medical Board denies an application for disability retirement.

715:10-17-13 is being amended to make references to "TRS" consistent throughout the rules.

715:10-25-2 is being amended to make references to "TRS" consistent throughout the rules and remove reference to a form that is no longer in use.

## CONTACT PERSON:

Phyllis Bennett, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK, 73105, 405-521-4745.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 3. SERVICE ELIGIBILITY

### 715:10-3-1. Requirements for creditable service

(a) All members of ~~TRS Teachers' Retirement System~~ must be employed a specified amount of time as related to their educational employment position, and earn a minimum salary, before creditable service will be awarded. A school/employment year typically falls between July 1 and June 30 of any year. No service performed as an unpaid volunteer shall be counted as service credit. For service performed on or after July 1, 2013, creditable service will be awarded based upon the information provided by each employer certifying full-time equivalent for each position, subject to approval by TRS. No member shall receive one (1) year of service credit for less than 960 hours of employment. (This does not mean that a member working 960 hours is automatically entitled to receive one (1) year of creditable service.) No more than one (1) year of creditable service shall be awarded for all service in any one (1) school year. For service performed on or after July 1, 2013, fractional service will be awarded for less than full-time employment performed during the contract year.

(b) For service performed ~~from on or after~~ July 1, 2016, through June 30, 2019, service credit will be the result of the days the employee worked during the employment year

divided by the number of days the full-time equivalent for that position would be required to work during the entire employment year. A member employed in a position where the full-time equivalent is required to work at least 6 hours per day, 30 hours per week, and 8 months per year shall be considered a full-time employee. ~~A member employed less than 6 hours per day, 30 hours per week, or 8 months in a year shall be considered a part-time employee.~~

(c) For service performed ~~from on or after~~ July 1, 2016, through June 30, 2019, the fractional service credit awarded for part-time employment will be based on the number of hours the employee works per week divided by the number of hours the full-time equivalent for that position would be required to work per week. A member employed less than 6 hours per day, 30 hours per week, or 8 months in a year shall be considered a part-time employee. If the employee works less days per week or employment year than the full-time equivalent, fractional service will also be awarded based on the number of days the employee works in the employment year divided by the number of days the full-time equivalent works during the employment year. ~~For example, if the employee worked 15 hours a week and the full-time equivalent for the position is 40 hours per week, then the employee would receive .40 service credit (.38 rounded to .40 under subsection (d) below). If the employee worked 20 hours/week and the full-time equivalent is 40 hours per week, then the employee would receive fractional service credit of .50 (maximum) for completing the full contract year. If an employee works 8 hours a day, 3 days a week and the full-time equivalent works 8 hours a day 5 days a week the employee would receive .60 (maximum) for completing the full contract year.~~

(d) For service performed on or after July 1, 2019, the formula used to calculate service credit will be applied in the same manner for both full-time and part-time employment. The minimum requirement for full-time employment is 6 hours per day, 30 hours per week, and 8 months per year. Service credit will be reduced if the employee works less than the minimum requirement for full-time employment or less than the full-time equivalent for the position worked. Service credit will be calculated by multiplying the full-time equivalent percentage by the employment year percentage as follows:

(1) Full-time equivalent percentage is calculated by dividing the number of hours per week the member was employed by the number of hours per week for the full-time equivalent position.

(2) Employment year percentage is calculated by dividing the number of days the member was employed by the number of days required for the full-time equivalent position for the full employment year.

(~~e~~) For service performed on or after July 1, 2016, service credit of less than 1.0, ~~all service credit~~ shall be rounded to the nearest tenths (.4 hundredths and lower will round down, and .5 hundredths and higher will round up).

## SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

**715:10-5-4. Cost to purchase Oklahoma service**

The purchase price for each year of Oklahoma service, unless otherwise specified, shall be based on the actuarial cost of the incremental projected benefits being purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost shall be based on the actuarial assumptions adopted by the Board of Trustees to be utilized in the actuarial valuation report for the Fiscal Year beginning each July 1. New actuarial assumptions approved by the Board subsequent to January 1, 1991, shall be incorporated into such tables with an effective date of the next January 1.

(2) The actuarial value shall be based upon the member's age, full-time equivalent salary and contribution level at the time of purchase (or the annual salary of the previous year, if greater), together with the earliest age for retirement with maximum benefits and actuarially assumed salary at time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be determined as the age at last birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be based upon mortality tables adopted by the Board of Trustees.

(5) The actuarial cost shall not be less than the contributions required of the member at a rate commensurate with the salary earned as a regular full-time employee the last preceding school year prior to the purchase. Individuals employed on a less than fulltime basis shall have their salary adjusted upward, in a pro rata manner, to the amount that would be earned if employed full-time.

(6) Payment may be made in a lump sum for all eligible years of service or in installments equal to establishing one (1) year of creditable service.

(7) A billing statement will be issued at the request of the member. The due date of payment shall be the date prior to the member's next birthday or June 30, whichever occurs first.

(8) A member may request payment of past service credits billed in accordance with provisions of 70 O.S. Section 17-116.8, as amended, to be amortized in monthly installments of not more than sixty (60) months. A payment schedule may be established allowing the member to make monthly payments directly to Teachers' Retirement or through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to Teachers' Retirement. Payments remitted by an employer for its employees must be kept separate from the employer's regular retirement contributions and tax sheltered annuity deposits. Effective January 1, 2002, installment payments made through employer payroll deductions qualify for special tax treatment. (See OAC 715:10-5-35.)

(9) The installment payment schedule provided for in this section must be in equal monthly increments of twelve-month periods not to exceed sixty (60) months.

The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in paragraph (11) of this section.

(10) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. ~~The current interest rate is eight percent (8%).~~

(11) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated in whole years for only the principal amount paid. Any payment balance that is not used in crediting whole years will be refunded to the member.

(12) Credit will not be awarded for partial years of service unless the member's employment record is such that one-half (1/2) year of credit is included in the original service to be purchased.

(13) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in paragraph (11) of this section. All payments must be completed ninety (90) days prior to the effective retirement date of the member.

**715:10-5-9. Re-establishing withdrawn service**

After returning to employment in the public schools of Oklahoma a member may redeposit a withdrawn account to re-establish service previously withdrawn from the system. For purposes of this section the following shall apply:

(1) A "classified" and "non-classified" member (except as noted in paragraph 2 of this section) who has returned to public education employment and has established one full year (twelve calendar months) of creditable Oklahoma service, is eligible to redeposit withdrawn contributions. A redeposit of withdrawn contributions must include all applicable interest, which shall be computed at a simple interest rate of ten percent (10%) per annum from the date of the withdrawal to the date repayment is made.

(2) Non-classified members who voluntarily withdrew from membership in TRS, between July 1, 1984 and June 30, 1990, without terminating employment in the public schools of Oklahoma, are not eligible to redeposit or purchase past service for any period of employment between the date of the membership period covered by the withdrawn account and the date of return to membership in TRS.

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(3) Non-classified members who voluntarily cease monthly contributions to TRS while continuing to be employed in an eligible position shall be considered to have withdrawn from membership.

(4) Requests for redeposits should be made to ~~TRS~~ the Teachers' Retirement System in writing. The request must include the name in which the service was rendered, the TRS Member ID number or Social Security number, and the number of years withdrawn.

(5) Documentation of this service is on file with ~~TRS~~ in the Teachers' Retirement System office and will be verified by the staff. Service that cannot be verified ~~documented~~ by researching microfilm records of the member's prior service account or the monthly remittance reports from the employing school must be purchased under the rule for establishing service prior to membership.

(6) Repayments of withdrawn accounts may be made by active contributing members of TRS in a single lump sum, which includes the withdrawn contributions and all applicable interest, or in installment payments. Such installment payments may be paid in 12-month increments, but shall be completed within 60 months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in immediate termination of the installment payment schedule. The member will be given the option of paying the remaining balance within six (6) months. If the balance is not paid in full in the remaining six (6) month period, the redeposit will be canceled. Installment payments shall include interest based upon actuarial assumptions adopted by the TRS Board of Trustees. Such installment payments shall be completed before the member's effective retirement date. No proration is allowed for partial payments. If payments terminate prior to completion of the installment agreement, the amount paid by the member shall be refunded without interest.

(7) Redepositing of withdrawn accounts must be completed, and payment made to TRS, ninety (90) days prior to the effective date of a member's official retirement date.

(8) No person may make a redeposit to a member's account after the death of the member.

### **715:10-5-15. Application for military service credit**

Members desiring to obtain credit for military service credit should request in writing to be billed for the cost of the credit. Included with the request should be a certified copy or copies of the member's service record showing the dates and nature of the member's active military duty [Form DD-214, Form DD-217 or VA Certification of Active Duty ~~is the type of certification accepted as documentation of active duty military service~~]. TRS may require the member to provide ~~make available to it~~ such other evidence as may be required to establish the member's eligibility for military service. When the system determines the duty eligible for credit, it shall bill the member for the years of eligible credit. If the member becomes eligible for additional credit after the billing by TRS it shall be

the responsibility of the member to request a second billing. Payment must be made by the date shown on the billing statement to avoid additional charges that may be required after the expiration of the billing date.

### **715:10-5-25. Application for out-of-state service credit**

Members desiring to obtain credit for out-of-state service credit should submit to request in writing ~~TRS a Form 120 Verification of Out-of-State Service form~~. Included with the request ~~verification~~ should be a list of all employment in the public schools of other states. ~~(This will assist TRS staff in forwarding the appropriate number of application forms.)~~ Verification forms must be completed by the state retirement system for the employing state. TRS may require the member to provide ~~make available to it~~ such other evidence as may be required to establish the member's eligibility for out-of-state service. When the system determines the service eligible for credit, it shall bill the member for the years of eligible credit. If the member becomes eligible for additional credit after the billing by TRS it shall be the responsibility of the member to request a second billing. Payment must be made by the date shown on the billing statement to avoid additional charges that may be required after the expiration of the billing date.

### **715:10-5-35. Employer pick-up of purchase of service credit purchase**

(a) The purpose of OAC 715:10-5-35 is to provide a pick-up of employee contributions by participating employers under Section 414(h)(2) of the Internal Revenue Code of 1986 for contributions that are made for the purpose of purchasing service credit or re-establishing withdrawn service under Chapter 10, Subchapter 5 of these Rules, and for contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2. Employers may elect to participate in the pick-up of employee contributions made for the purpose of purchasing service credits, or re-establishing withdrawn service by a resolution adopting the provisions of this regulation.

(b) An active member of ~~TRS~~ the Teachers' Retirement System ~~(employed by a participating employer)~~ who elects to purchase or re-establish service credit under any applicable provision of Chapter 10, Subchapter 5 of these Rules, or to make contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2 through installments ~~in accordance with a schedule established by the Board of Trustees~~, may elect to do so through a binding, irrevocable payroll reduction authorization established by TRS.

(c) An active member of ~~TRS~~ the Teachers' Retirement System, having executed a binding, irrevocable payroll reduction authorization with respect to any such contributions, shall not be entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the employer to ~~TRS~~ the Teachers' Retirement System. Such contributions shall be remitted to ~~TRS~~ the Teachers' Retirement System and credited to the member in the same manner as all other employee contributions. Such contributions, although designated

as employee contributions, will be paid by the employer in lieu of contributions by the employee. The contributions so assumed shall be treated as tax-deferred employer "pick-up" contributions pursuant to the United States Internal Revenue Code Section 414(h)(2), as authorized in a favorable letter ruling by the Internal Revenue Service.

(d) An active member of ~~TRSthe Teachers' Retirement System~~ may elect to pay all or part of any contribution to purchase or re-establish service credit or to make contribution deficit payments provided for by 70 O.S. § 17-116.2C or balances due as authorized under 70 O.S. § 17-116.2 through such payroll reduction. The amount by which an employee's compensation will be reduced and the duration of the reduction shall be specified on the authorization form prescribed by ~~TRSthe Board of Trustees~~ and the amounts and duration shall be irrevocable and binding once made. Prepayment of amounts covered by the authorization is not permitted. However, nothing herein shall prevent a member from paying any amounts not covered by the authorization with after-tax dollars, provided that any such after-tax payments by an employee of a participating employer shall be paid directly by the employee to ~~TRSthe Teachers' Retirement System~~, as opposed to being paid to or withheld by the participating employer. An employee of non-participating employer may purchase service credit or re-establish withdrawn service by making after-tax payments directly to ~~TRSthe Teachers' Retirement System~~.

(e) No such payroll reduction shall begin unless and until the member executes the payroll reduction authorization described below on a form prescribed by ~~TRS the Board of Trustees and The Board of Trustees~~ delivers the will send such form to the treasurer or other disbursing officer of the participating employer. After receiving the binding, irrevocable payroll reduction authorization, the treasurer or other disbursing officer of each participating employer shall reduce the member's regular annual compensation by the authorized amount and remit these contributions to ~~OTRSTRS~~, in addition to (but separate from) the mandatory contributions from the member's regular annual compensation pursuant to 70 O.S., § 17-116.2 and OAC 715:10-13-3. The participating employer shall continue to make such reductions for the number of months specified on the form and shall treat these reductions as picked-up contributions.

(f) All such payroll reductions, including the amounts and the duration specified, shall be binding and irrevocable upon the member's execution of the prescribed form.

(g) Notwithstanding the above, such reductions will cease only after the authorization has expired by its terms or upon any of the following events:

(1) The member's death. In the event of a member's death, the designated beneficiary shall have the option of paying the remaining amount owed (using after-tax dollars) within six (6) months of the member's death. If the balance is not paid, the beneficiary shall be entitled to prorated credit for that portion of the additional contributions actually made for service purchases prior to the member's death. If there is any remaining amount owed with respect to a redeposit of contributions, the designated beneficiary will be reimbursed for those redeposits which

had already been paid at the time of the member's death. A beneficiary may not make payments for a purchase of service credit or a re-deposit of contributions if such a purchase or re-deposit had not been initiated by the member prior to the member's death.

(2) The termination of the member's employment. In this event, the member shall have the right to pay the remaining amount owed (using after-tax dollars) within six (6) months of the member's termination of employment, but payment must be completed one (1) month prior to the effective retirement date of the member. If the member retires and does not pay the entire remaining amount, the member shall be entitled to prorated service credit for those payments actually made for service purchases. If there is any remaining amount owed with respect to a re-deposit of contributions, the member shall be reimbursed for those redeposits which had already been paid at the time of the member's termination. In the situation where a terminated member becomes employed by another employer participating in ~~OTRSTRS~~, the member may elect to reinstate or not reinstate his authorization with the new employer.

(3) For purposes of (1) and (2) above, after-tax contributions shall only be received to the extent allowed by section 415 of the Internal Revenue Code.

(h) In no event shall the member receive a return of the payroll reductions made hereunder, except as a refund together with all other contributions, as provided in OAC 715:10-11-1 et seq. or as a refund of a redeposit of contributions as provided in subsection g-(2) above herein.

(i) Payroll reductions and installment agreements hereunder shall last no longer than sixty (60) months.

**715:10-5-37. Incentive service credit**

(a) Pursuant to 70 O.S. §17-116.2B, an active member of TRS who is employed and participating with an entity or institution within The Oklahoma State System of Higher Education may purchase not to exceed two (2) years of incentive credit if:

(1) the member has reached his or her normal retirement date or is within two (2) years of reaching the member's normal retirement date as authorized in Section 17-105 of this title, or

(2) the member is eligible for or is within two (2) years of being eligible for early retirement pursuant to paragraph 1 of subsection A of Section 17-116.2 of this title.

(b) Purchased incentive credit may only be used as participation service to qualify the member for normal or early retirement or as additional participation service if the member is already eligible for normal or early retirement, and in the same period of time and with the same service credit which would have otherwise accrued if the purchase had not occurred.

(c) The member shall notify TRS no later than sixty (60) days after the date of last employment indicating an intent to purchase the incentive credit.

(d) Upon receipt of notice of the member's intent to purchase incentive service credit, TRS shall calculate the purchase price

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for eligible incentive credit based upon actuarial costs as defined in OAC 715: 10-5-4 (subparagraphs 1-5) and notify the member, in writing, of the cost to purchase the credit.

(e) The member must make payment to TRS of the cost to purchase the credit. Full or partial payments made pursuant to this section shall not be refundable under any circumstances.

(f) Complete payment for such service must be made ninety (90) days prior to the member's effective retirement date.

(g) A member cannot purchase both credit for termination due to reduction in force and incentive credit.

## SUBCHAPTER 9. SURVIVOR BENEFITS

### **715:10-9-1. Return of contributions when death occurs before retirement**

Upon the death of a member, who has not retired, the designated beneficiary on file with TRS prior to the member's death, or estate (if there is no designated beneficiary, or if the designated beneficiary predeceases the member) shall receive the member's total contributions, plus one hundred percent (100%) of all interest earned through the end of the fiscal year. Interest shall cease to accumulate with the payment of any portion of the member's contributions and interest to any beneficiary. Interest on death claims shall be calculated according to the following schedule: ~~[See OAC 715:10-9-7, if the member and beneficiary were divorced before death].~~

(1) July 1, 1968, through June 30, 1977, four and one-half percent (4 1/2%), compounded annually.

(2) July 1, 1977, through June 30, 1981, seven percent (7%), compounded annually.

(3) July 1, 1981, ~~to present~~ through June 30, 2019, eight percent (8%), compounded annually.

(4) July 1, 2019 to present, seven and one-half percent (7 1/2%), compounded annually. See OAC 715:10-9-7, if the member and beneficiary were divorced before death.

### **715:10-9-2. Death benefit when death occurs before retirement**

(a) A death benefit of \$18,000 shall be paid by TRS to the designated beneficiary upon the death of an in-service member. If there is no designated beneficiary, or if the designated beneficiary predeceases the member, the member's estate shall receive the death benefit.

(b) "In-service" membership shall include:

(1) Employees in an active-member status within the Oklahoma public education system at the time of death.

(2) Members who have been, or would have been rehired, automatically or otherwise, for the next school year when death occurs during the summer break.

(3) Members on sick leave, for up to one (1) full year, who would be returned to employment by the employer upon satisfactory recovery.

(c) "In-service" membership shall not include:

(1) Employees who are not eligible for TRS membership.

(2) Any member in an in-active employment status except as noted above in paragraph (b).

(3) Any member who resigned as an employee of the public schools of Oklahoma.

### **715:10-9-6. Probate Waivers**

(a) In the event a member dies, leaving no living beneficiary or having designated his estate as beneficiary, the System shall require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. However, this requirement may be waived by the System for any benefits or unpaid contributions in the amount of ~~\$5,000.00~~ \$25,000.00 or less, upon presentation of:

(1) the member's valid Last Will and Testament;

(2) an Affidavit of Heirship naming all heirs to the member's estate which must state:

(A) that the value of the deceased member's entire estate is subject to probate, and that the entire estate wherever located, less liens and encumbrances, does not exceed the amount permitted by law, including the payment of benefits or unpaid contributions from the System;

(B) a description of the personal property claimed (including the death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate; and

(C) a claim by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System.

(3) a Hold Harmless Agreement signed by all heirs;

(4) a Corroborating Affidavit from someone other than an heir who is familiar with the deceased member; and

(5) proof of payment of expenses of last sickness, death and burial, including all medical, hospital and funeral expenses.

(b) The Executive Director of ~~TRS~~ the Teachers' Retirement System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. If there is any question as to the validity of any document herein required, the judicial appointment requirement shall not be waived.

(c) After paying any death benefits or unpaid contributions to any claiming heirs as provided by this section, ~~TRS~~ the Teachers' Retirement System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.

### **715:10-9-8. Beneficiary designation for death benefit**

A member may change or update his or her beneficiary designation for the statutory death benefit at any time.

**SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS**

**715:10-11-1. Withdrawal from membership by an eligible person**

Any member who terminates employment in the public schools of Oklahoma may voluntarily withdraw from membership in ~~TRSthe Teachers' Retirement System~~ under the following conditions:

(1) ~~70 O.S. §17-105The Teachers' Retirement System law~~ provides that members who leave Oklahoma public education employment are eligible to withdraw the contributions made to their TRS account four (4) months after termination. A former employee may submit application for the proceeds of the account after the last day physically worked. ~~Withdrawal payment can be made no earlier than four (4) months after the last public school employment. There are no exceptions to this waiting period. Withdrawal forms may be obtained by contacting the TRS office. Last day of employment shall be defined as:~~

- (A) ~~For teachers — the actual last teaching day in the classroom;~~
- (B) ~~For other personnel — the actual last day on the job.~~

(2) Written verification from the school's payroll department of a member's termination of employment and/or non-resumption of teaching contract must be on file before processing the Application for Withdrawal.

(3) The years of membership shall be calculated as follows:

- (A) For withdrawal purposes - from the date of the first contribution of the current membership to the date of withdrawal, except that member accounts closed in compliance with OAC 715:10-7-3 will be from the date of the first contribution to the date the account is closed.
- (B) For payment of interest purposes - from the date of the first contribution of the current membership to the date of withdrawal, except that member accounts closed in compliance with OAC 715:10-7-3 will be from the date of the first contribution to the date the account is closed.

(4) Interest rate on withdrawals shall be paid as follows:

- (A) July 1, 1968 through June 30, 1977 - four and one-half percent (4 1/2%), compounded annually.
- (B) July 1, 1977 through June 30, 1981 -seven percent (7%), compounded annually.
- (C) As of July 1, 1981 ~~to present~~through June 30, 2019 - eight percent (8%), compounded annually.
- (D) As of July 1, 2019 to present - seven and one-half percent (7 1/2%), compounded annually.

(5) Interest payment on withdrawals shall be paid as follows:

- (A) If termination occurs within sixteen (16) years from the date membership began, fifty (50) percent of the total accrued interest shall be paid.

(B) With at least sixteen (16) but less than twenty-one (21) years of membership, sixty (60) percent of the total accrued interest shall be paid.

(C) With at least twenty-one (21) but less than twenty-six (26) years of membership, seventy-five (75) percent of the total accrued interest shall be paid.

(D) With at least twenty-six (26) years of membership, ninety (90) percent of the total accrued interest shall be paid.

(6) ~~The Board of Trustees has ruled that a~~ person whose membership has not terminated due to five (5) years of absence from Oklahoma public education employment, but who has applied to withdraw all accumulated contributions, shall not have membership terminated until the withdrawal ~~payment check~~ has been processed~~accepted and cashed~~.

(7) Effective July 1, 1990, no member is eligible to withdraw contributions made on a pre-tax basis, unless the employee has terminated employment in the public schools for a period of four months.

**715:10-11-7. Rollovers from ~~OTR~~TRS to other eligible retirement plans**

(a) Notwithstanding any other provision of the administrative code that otherwise would limit a distributee's election to make a direct rollover, a distributee may elect at the time and in the manner prescribed by the Board of Trustees to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as a direct rollover as required under Internal Revenue Code Section 401(a)(31) and the regulations thereto.

(b) The following definitions shall apply for purposes of the words and phrases used in this Section:

(1) An "eligible rollover distribution" includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include the following:

- (A) any distribution that is one of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated ~~beneficiary~~ joint annuitant.
- (B) any distribution that is one of a series of substantially equal periodic payments for a specified period of ten years or more.
- (C) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(1)(9).
- (D) the portion of any distribution that is not includable in gross income.
- (E) any distributions during a year that are reasonably expected to total less than \$200.
- (F) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic

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relations order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1.

(G) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only

(i) to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b) or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(ii) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(H) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code Section 408A.

(2) An "eligible retirement plan" includes any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Internal Revenue Code Section 408(a);

(B) an individual retirement annuity described in Internal Revenue Code Sections 408 (b);

(C) an annuity plan described in Internal Revenue Code Section 403(a);

(D) a qualified trust described in Internal Revenue Code Section 401(a);

(E) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(F) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or

(G) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(3) A "distributee" means a member, a member's spouse, or a member's former spouse who is the alternate payee under a qualified domestic order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1. Before January 1, 2002, in the case of an eligible rollover distribution to the member's spouse, an eligible retirement plan only includes an individual retirement account or

an individual retirement annuity described in Internal Revenue Code Sections 408(a) or (b). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity (or, effective January 1, 2008, a Roth IRA) established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Eligible rollover distributions may be paid to not more than two eligible retirement plans, as selected by the distributee, when a direct rollover is elected.

### SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

#### 715:10-13-3. Employee contribution rates

(a) Beginning with the 1996-97 school year, the maximum compensation level for all members, other than those members employed by a comprehensive university on or before June 30, 1995, shall be the member's regular annual compensation. This includes any employee of a comprehensive university who transfers to another school or university after June 30, 1996, or who terminates paid employment status with a comprehensive university and returns to employment at a later date.

(b) Beginning with the 1996-97 school year, the maximum compensation level for those employees of a "comprehensive university", defined in statutes as the University of Oklahoma and all of its constituent agencies, including the University of Oklahoma Health Sciences Center, the University of Oklahoma Law Center and the Geological Survey, and Oklahoma State University and all of its constituent agencies, including the Oklahoma State Agricultural Experiment Station, the Oklahoma State University Agricultural Extension Division, the Oklahoma State University College of Veterinary Medicine, the Oklahoma State University Center for Health Sciences, the Technical Branch at Oklahoma City the Technical Branch at Okmulgee and Oklahoma State University-Tulsa, who were employed on or before June 30, 1995, shall contribute the following:

(1) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level not to exceed \$25,000:

(A) \$32,500 for service between July 1, 1996 and June 30, 1997,

(B) \$37,500 for service between July 1, 1997 and June 30, 1998,

(C) \$42,500 for service between July 1, 1998 and June 30, 2000,

(D) \$47,500 for service between July 1, 2000, and June 30, 2001,

(E) \$52,500 for service between July 1, 2001, and June 30, 2002,

- (F) \$57,500.00 for service between July 1, 2002, and June 30, 2003,
- (G) \$62,500.00 for service between July 1, 2003, and June 30, 2004,
- (H) \$67,500.00 for service between July 1, 2004, and June 30, 2005,
- (I) \$72,500.00 for service between July 1, 2005, and June 30, 2006,
- (J) \$77,500.00 for service between July 1, 2006, and June 30, 2007, and
- (K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007, and

(2) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level in excess of \$25,000, or who did not make an election prior to June 30, 1995, because their annual salary was less than \$25,000:

- (A) \$49,000 for service between July 1, 1996 and June 30, 1997,
- (B) \$54,000 for service between July 1, 1997 and June 30, 1998,
- (C) \$59,000 for service between July 1, 1998 and June 30, 2000,
- (D) \$64,000 for service between July 1, 2000, and June 30, 2001,
- (E) \$69,000 for service between July 1, 2001, and June 30, 2002,
- (F) \$74,000 for service between July 1, 2002, but not later than June 30, 2003,
- (G) \$79,000 for service between July 1, 2003, and June 30, 2004,
- (H) \$84,000 for service between July 1, 2004, and June 30, 2005,
- (I) \$89,000 for service between July 1, 2005, and June 30, 2006,
- (J) \$94,000 for service between July 1, 2006, and June 30, 2007, and
- (K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007.

(c) ~~Every~~ A teacher employed by any school district or ~~technology center school~~ Career and Technology Education district, who qualifies for a minimum salary pursuant to the State's minimum salary schedule shall have a specific amount credited against the employee's contribution amount to ~~TRSthe Teachers' Retirement System~~. The State of Oklahoma shall pay an annual amount as set forth in 70 O.S. § 17-108.2 amount for each fiscal (or plan) year as follows,

- (1) ~~0 years of service = \$60.15~~
- (2) ~~1 year of service = \$103.41~~
- (3) ~~2 years of service = \$145.65~~
- (4) ~~3 years of service = \$188.15~~
- (5) ~~4 years of service = \$233.33~~
- (6) ~~5 years of service = \$278.76~~
- (7) ~~6 years of service = \$325.26~~
- (8) ~~7 years of service = \$372.82~~

- (9) ~~8 years of service = \$421.44~~
- (10) ~~9 years of service = \$471.12~~
- (11) ~~10 years of service = \$521.87~~
- (12) ~~11 years of service = \$573.67~~
- (13) ~~12 years of service = \$626.54~~
- (14) ~~13 years of service = \$680.48~~
- (15) ~~14 years of service = \$735.47~~
- (16) ~~15 years of service = \$791.53~~
- (17) ~~16 years of service = \$848.65~~
- (18) ~~17 years of service = \$906.83~~
- (19) ~~18 years of service = \$966.07~~
- (20) ~~19 years of service = \$1,026.38~~
- (21) ~~20 years of service = \$1,087.75~~
- (22) ~~21 years of service = \$1,150.18~~
- (23) ~~22 years of service = \$1,213.68~~
- (24) ~~23 years of service = \$1,278.23~~
- (25) ~~24 years of service = \$1,343.85~~
- (26) ~~25 or more years of service = \$1,410.53~~

(d) Each school district or technology center ~~Career and Technology Education~~ school district shall adjust each eligible employee's monthly contribution to ~~TRSthe Teachers' Retirement System~~ in accordance with statutory provisions, and shall cause the annual amount paid by the State of Oklahoma as provided in the preceding paragraph to be deducted from the monthly remittance to each eligible employee's retirement account and a like amount added to the net pay of the eligible employee.

(1) If the school district pays the retirement contribution in addition to the employee's total compensation, the employer must reduce the employee's annual retirement contribution which the school pays to ~~TRSthe Teachers' Retirement System~~ by the appropriate amount and add that amount to each eligible employee's net pay.

(2) If the school district deducts the retirement contribution from each employee's total compensation, whether as a salary reduction to pay the retirement contribution as a fringe benefit or as a deduction on an after-tax basis, the employer must adjust the employee's annual retirement deduction in accordance with the amount to be paid by the State. The adjustment in the retirement deduction will result in an increase to the eligible employee's net pay.

(3) The State contribution to each eligible employee's retirement account is determined by the total experience of each employee as verified by the State Department of Education or the Oklahoma Department of Career and Technology Education.

(4) The State contribution must be calculated and paid in equal monthly installments as determined by the eligible employee's contract, i.e. ten months, eleven months or twelve months. Eligible employees who work less than a full contract year, whether full-time for less than a full contract year or part-time for the full contract year, shall have the prescribed State contribution prorated in accordance with the eligible employee's full-time equivalent rate of employment.

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### 715:10-13-13. Contributions while receiving workers' compensation payments from Workers' Compensation

Any member who is an active contributing member and receives temporary total disability benefits during the period of absence from a public school due to a work-related injury or illness and qualifies for payment pursuant to the Workers' Compensation Act shall receive credit for said period of absence, if contributions were not remitted on the member's regular annual compensation while the member is receiving temporary total or partial disability benefits, subject to the following requirements:

- (1) the member was employed by the public school immediately prior to and during the period of absence,
- (2) the member must notify the System in writing not later than four (4) months after the member's return to his or her job duties with the public school, or termination of the temporary total disability benefits, whichever is earlier, of the member's desire to receive service credit for the period of absence,
- (3) the public school employer must certify to the System in writing the dates during which temporary total disability benefit payments were paid to the member, and
- (4) the member and the public school employer shall each pay the respective contributions required for the period of absence without interest within sixty (60) days of billing by the System, or with interest at a rate consistent with the actuarial assumed earnings rate adopted by the Board of Trustees (~~currently 8% per annum~~), compounded annually if paid after said sixty (60) days. Employee and employer contributions will be based on the member's regular annual compensation the member would have earned had the injury or illness not occurred.
- (5) All balances due must be paid in full at least ~~thirty~~(30) days prior to termination of employment or ninety (90) days prior to the effective date of a member's official retirement date.

## SUBCHAPTER 15. SERVICE RETIREMENT

### 715:10-15-5. Date of retirement contract is binding; revocation of contract

The final contract for retirement becomes binding on the effective date shown on the contract and shall be known as the date of retirement. The contract may be revoked by the member, or the retirement plan changed, before the date of retirement. Any change or revocation must be in writing, delivered to ~~TRS the Teachers' Retirement System, Oklahoma City, Oklahoma,~~ or postmarked by the United States Postal Service prior to the effective date of retirement. After the retirement date, the contract cannot be canceled. After the retirement date the retirement plan cannot be changed except as outlined in paragraphs one (1) and two (2) below. If the member elected the Option 2 or Option 3 retirement contract and the member's designated ~~beneficiary~~ joint annuitant dies before the retirement date, the member may select another retirement plan without penalty. If a Maximum or Option 1 retiree should

die during the month following the date of retirement and before the first retirement benefit is due, any distribution to beneficiaries designated on the member's retirement contract shall be paid pursuant to OAC 715:10-9-1 and 715:10-9-2.

(1) After the retirement date, a member who elected a reduced benefit under Option 1, Option 2, Option 3 or Option 4 may make a one-time irrevocable election to change their retirement plan within sixty (60) days of the retirement date. The beneficiary or joint annuitant designated by the member at the time of retirement shall not be changed if the member makes the election provided for in this paragraph. Such election must be made in writing, delivered to ~~TRS the Teachers' Retirement System, Oklahoma City, Oklahoma,~~ or postmarked by the United States Postal Service prior to the sixtieth day after the date of retirement.

(2) A member who elected the Maximum benefit and marries after the retirement date, may make a one-time election to change to an Option 2 or Option 3 benefit and name the member's spouse as the designated joint annuitant ~~beneficiary~~. The member shall provide proof of the member's good health before the Board of Trustees will permit a change to either Option 2 or 3 and the naming of a designated beneficiary. A medical examination conducted by a licensed physician is required for purposes of determining good health. Such examination must be approved by the Medical Board. The member shall be required to provide proof of age for the new joint annuitant ~~beneficiary~~. The Board of Trustees shall adjust the monthly benefit to the actuarially equivalent amount based on the ~~new~~ newly designated joint annuitant ~~beneficiary's~~ age. Such election must be made in writing using the forms proscribed by ~~TRS the Teachers' Retirement System~~ and delivered to ~~TRS the Teachers' Retirement System, Oklahoma City, Oklahoma,~~ or postmarked by the United States Postal Service ~~prior to~~ within one (1) year ~~of~~ after the date of marriage, ~~or July 1, 2011, whichever date is later.~~

### 715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP")

(a) ~~Legislation enacted during the Special Session of the~~ Effective July 1, 2006, the Legislature ~~legislature~~ modified the standard retirement formula for TRS members employed by participating remitting entities under 70 O.S. § 17-108.1(A), which excludes other than comprehensive and regional four-year universities. ~~A member must have been employed by a participating remitting entity for at least one full school year (twelve months) immediately prior to termination of employment or retirement to qualify for this section.~~

(b) A ~~TRS~~ member who was employed prior to July 1, 1995, may have service credits performed prior to July 1, 1995, calculated in the member's retirement formula used for service performed after July 1, 1995, when the member's average salary at retirement is greater than \$40,000, and the member works for a participating remitting entity under Section

17-108.1(A) beyond the year in which he or she reaches normal retirement age. (The terms "average salary" and "normal retirement age" are defined in 70 O. S. § 17-101.)

(c) A member who works one year beyond the school year in which he or she reaches normal retirement age, and who is employed by a participating remitting entity under Section 17-108.1 (A) employer, may move two (2) years of service performed prior to July 1, 1995, to the retirement formula used to calculate service performed after July 1, 1995. For each additional year the member works beyond normal retirement age, employed by a participating remitting entity under Section 17-108.1 (A) employer, he or she may move two (2) additional years of service credit performed prior to July 1, 1995. Only years worked beyond normal retirement and while working for a participating remitting entity under Section 17-108.1 (A) shall be used to uncap years of service.

(d) For members who retire on or after July 1, 2006, and before June 30, 2007, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is \$60,000. During this one-year period, a member whose average salary at retirement is greater than \$60,000 shall have benefits calculated in three steps: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x \$60,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(e) For members who retire on or after July 1, 2007, and before June 30, 2008, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is \$80,000. During this one-year period, a member whose average salary at retirement is greater than \$80,000 shall have benefits calculated in three steps: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x \$80,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(f) For members who retire on or after July 1, 2008, the average salary used to calculate the benefit for service credits that qualify to be moved under this section is the member's average salary at retirement. The member's retirement benefit will be calculated as follows: 2% x \$40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; and 2% x the member's average salary for service performed prior to July 1, 1995, that qualifies as moved service and for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.]

(g) A member whose Regular Annual Compensation was greater than \$40,000 during the school years 1987-88 through 1994-95 must make an additional contribution to qualify for movement of service provided for in this section. [See OAC

715:10-5-4.1. Payment of contribution deficit for Education Employees Service Incentive Plan]

(h) A member reaches Normal Retirement Age during the school year he or she reaches age 62, or when the member's age and total service equal 80 or more for those members whose official TRS membership date is prior to July 1, 1992, and when the member's age and total service equal 90 or more for those members whose official TRS membership date is on or after July 1, 1992.

(i) For this section, credit a member may receive for having 120 or more days of unused sick leave at retirement will be used in determining the school year in which a member reaches Normal Retirement Age.

(j) For this section, a member who reaches Normal Retirement Age by the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of that school year. A member who reaches Normal Retirement Age after the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of the next school year in which the member is employed.

(k) To qualify for a year of service beyond Normal Retirement Age, OAC 715:10-3-2 and OAC 715:10-3-3 will be used to determine credited service. However, a fractional year of service performed after reaching Normal Retirement Age cannot be combined with a fractional year of service performed prior to reaching Normal Retirement Age to qualify for a year of service credit under this section. Fractional years of service worked after reaching Normal Retirement Age can be combined to create a full year of credited service. If a member participates in EESIP and wears away at least two (2) years of capped service but has employment at a non-participating entity (comprehensive and regional four-year universities) after reaching Normal Retirement Age, service credit will be awarded for the employment for the non-participating entity, but the salary the member earned at the non-participating entity will not be applied to those years of service which qualify for the Education Employees Services Incentive Plan (EESIP).

(l) The provisions of subsections e and f of this section become effective only if additional employer contributions are funded as required by 70 O.S. § 17-116.2C.

**715:10-15-10.1. "Pop-up" of Option 2 or Option 3 Retirement retirement Plans plans**

If the designated beneficiary joint annuitant under the Option 2 or 3 retirement plan dies at any time after the member's retirement date, but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases the member would have received had the member not selected the Option 2 or 3 retirement plan. In such an event, the member's monthly retirement benefit and any amount due at the death of the member shall be calculated as if the member had selected the Maximum retirement allowance. The increase in the member's monthly benefit becomes effective the first day of the month following the date of death of the designated beneficiary joint annuitant or July 1,

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1994, ~~whichever is later~~, and shall be payable for the member's remaining lifetime. The member shall notify ~~TRSThe Teachers' Retirement System~~ of the death of the designated ~~beneficiary~~joint annuitant in writing and provide a certified copy of the ~~beneficiary's~~joint annuitant's death certificate. In the absence of timely notice, ~~TRSThe Teachers' Retirement~~ shall make retroactive benefit payments to the member, not to exceed six (6) months from the time the member first became eligible for increased benefits to the date notification is received. Notwithstanding any other provision, increased benefits will not be due for any period prior to July 1, 1994.

### 715:10-15-11. Designation of beneficiaries or joint annuitant for retirement options

A designation of beneficiary or joint annuitant must be made when the retirement contract is completed. A member who selects the Maximum, ~~or Option 1, or Option 4~~ retirement plan may name more than one beneficiary. ~~Once the member has been retired for more than sixty (60) days or if no change in the member's retirement plan occurs, Beneficia-~~ries~~beneficiaries~~ named for the Maximum, ~~and Option 1, or Option 4~~ retirement plan may be changed by the member at any time using a form prescribed by TRS. ~~A member desiring to change or update a beneficiary designation should request TRS Form 90.~~ The joint annuitant for the Option 2 or Option 3 retirement ~~plan~~plans cannot be changed even if the joint annuitant dies before the member, providing, however, the retired member may designate a beneficiary different from the joint annuitant to receive the \$5,000 death benefit. The member who elects the Option 4 retirement plan must name a beneficiary, who can be any living person or persons, or a trust. The beneficiary does not have to be a spouse or dependent. In the case of a divorce the retirement contract remains in force and the member's joint annuitant (ex-spouse) will receive the member's monthly benefit after the member's death (if named as a joint annuitant) unless a Court, acting through a Qualified Domestic Relations Order, directs otherwise.

### 715:10-15-15. Disability retirement; application; effective date

(a) Any member who is actively employed in the public schools of Oklahoma and is regularly contributing to ~~TRSThe Teachers' Retirement System~~ may be retired due to a medical disability, which renders the member unable to perform regular employment duties, provided such member:

- (1) has at least ten (10) years of Oklahoma contributory membership service,
- (2) submits a complete application for disability retirement, and,
- (3) is found by the Medical Board of ~~TRSThe Teachers' Retirement System~~, to be medically disabled to continue regular duties, or
- (4) meets the requirements of paragraphs (1) and (2) of this subsection, and files a Social Security Award Notice certifying the member has been approved for disability benefits by the Social Security Administration, U. S. Department of Health and Human Services,

(5) however, a member who is eligible for unreduced regular retirement is not eligible for disability retirement benefits.

(b) A member who has terminated employment or is on leave without pay status shall be eligible for disability retirement by meeting the provisions of paragraph (a) of this rule, providing the disability existed at the time the leave without pay status commenced or the termination of employment from the public schools of Oklahoma occurred, and the disability was the reason for the leave status or termination of employment.

(c) The application for disability retirement required in paragraph (2) of subsection (a) of this section must include:

(1) a detailed statement by the member as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties of the member's current position.,

(2) a detailed statement by the member's employer (chief administrative officer or personnel officer) as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties assigned to the position of employment., and

(3) a detailed report by the member's physician giving the medical nature of the disability. The attending physician's report should certify that the member, in the physician's judgment, is mentally or physically incapacitated from further performance of duty, that such incapacity is likely to be permanent and that the member should be retired. Any examination required to complete this report must be at the expense of the member.

(d) ~~TRSThe Teachers' Retirement System~~ must receive the complete application for disability retirement by the first day of the month for in which the Medical Board of Trustees is scheduled to meet ~~to consider the application at its next regularly scheduled meeting.~~

(e) The effective date for disability retirement is the later of (1) or (2) below:

(1) the first day of the month in which the disability application is approved by the Medical Board of Trustees, and subsequent to termination of employment in the public schools, or

(2) the date determined by the Board of Trustees after an administrative review, if such review is requested by the member pursuant to the Administrative Procedures Act 75 O.S. 250 et seq., but in no instance will the effective date be prior to the first day of the month following receipt of the complete disability retirement application.

(f) The disability retirement becomes binding on the effective date specified in subsection (e) of this section and cannot be revoked except by written request from the member prior to the effective retirement date as provided by OAC 715:10-15-5 or by returning to employment as provided in OAC 715:10-15-21.

(g) The disability retirement benefit shall be calculated in the same manner as regular retirement benefits described in OAC 715:10-15-7, with the exception that no reduction will be made due to the age of the member. Providing that any member who qualifies for disability benefits after June 30, 2003,

who is married at the time his or her disability benefits commence, may elect an actuarially reduced 100% joint survivor retirement benefit based on factors provided by the Retirement System's consulting actuary.

(h) The disability retirement benefit is payable under the same provisions as the Maximum Retirement Plan or Retirement Option 2 explained in OAC 715:10-15-10. Payments are made monthly for the life of the retiree or until the member is able to return to employment (See OAC 715:10-15-21). The only survivor benefits available to a disabled member's beneficiaries or estate is a return of member contributions not paid to the member in the form of monthly benefits and the \$5,000 death benefit provided per statute, unless the disabled member elected the reduced benefit option to provide the spouse a monthly benefit as described in subparagraph (g) of this section.

(i) If the disabled member elects to receive an actuarially reduced 100% joint survivor retirement benefit, the surviving spouse will continue to receive the disabled member's monthly benefit for life. At the death of the disabled member, the surviving spouse will receive the \$5,000 death benefit provided by statute. If the disabled member's spouse should die before the disabled member, the disabled member's monthly disability benefit will be increased to the amount the disabled member would have been entitled to receive if the disabled member had elected the maximum disability benefit. The increased monthly benefit will become effective the first day of the month following the death of the disabled member's spouse providing proper notice is received by ~~TRS~~the Teachers' Retirement System, as provided in OAC 715:10-15-10.1.

**715:10-15-16. Review by Medical Board**

Upon receipt of the application for disability retirement, the ~~TRS~~ Medical Board of the Teachers' Retirement System will review the application at its next monthly meeting. The Medical Board may recommend to the Board of Trustees a member for permanent disability retirement or for a temporary disability retirement when in its opinion the prognosis of the disability is of a temporary nature. Temporary disability retirement benefits may be provided for six (6) to twelve (12) months, subject to re-examination by the Medical Board at the end of the prescribed period. If a member is granted temporary disability the member may apply for permanent disability, or reapply for temporary disability, only within one (1) month of the expiration of the temporary disability. The member will be notified in writing of the recommendation of the Medical Board. If disability benefits are not recommended by the Medical Board, the reason will be provided to the member in writing. The member may then submit additional medical evidence for further review or request an administrative hearing pursuant to the Administrative Procedures Act, 75 O.S. Section 250 et seq., and OAC 715:1-1-10 (with the exception of subparagraphs 1 and 2) within sixty (60) days of notification of the Medical Board's adverse recommendation.

**715:10-17-13. Election to return to qualifying employment**

Any retired member who returns to employment in the public schools of Oklahoma and is employed half-time or more as defined in OAC 715:10-3-2 and OAC 715:10-3-3 may return to post-retirement employment or active contributing status under the following conditions:

(1) Active Contributing Status. The retired member must file an irrevocable election to discontinue retirement benefits for the period of such employment. The return to membership contributing status must coincide with the beginning of a school year or the member must refund all benefit payments received from the beginning of the school year in which employment begins and make employee contributions on any compensation earned from the beginning of the school year to the date of the election to return to contributing status.

(2) The election form must be completed by the employing school and signed by the retired member and an official who has authority to employ or pay regular employees of the school. In addition, a new Personal Data Form ~~4-A~~ shall be completed and submitted to TRS to return a member to work status.

(3) The form must include the nature of the position held and the beginning date of employment. Retirement payments shall not be resumed during the summer months between consecutive years of this type of employment.

(4) The retired member and the employing public school shall remit employee and employer contributions in the same manner as active contributing employees.

(5) The retired member shall accumulate service credit in the same manner as active contributing employees of the system.

(6) Upon termination of employment, the retired member's monthly retirement benefits will resume with an adjustment to reflect credit for the additional employment as follows:

(A) The initial benefit calculated at the time of retirement will not be affected by the additional employment.

(B) Service credits will be accumulated and credited to the member's record in accordance with Subchapter 3 of this Chapter.

(C) A supplemental benefit for the year(s) of additional service will be calculated using the standard retirement benefit formula and the retirement plan and other options selected by the retiree when the member first retired (See OAC 715:10-15-7 and 715:10-15-7.1).

(D) The average salary used in calculating the supplement benefit will be the average of the salaries earned during this period of employment. In the event the member is employed for less than the number of years required to determine the appropriate average salary, the average will be determined by the number of years employed. Annual salaries will be based on contributions made and determined on a school year basis.

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(7) If the retired member is employed for a period of time which does not qualify for additional service credit, the employee contributions remitted by the employee or by the employer on the retired member's behalf will be refunded to the member without interest. Employer contributions as provided by OAC 715:10-13-3 will not be refunded.

(8) The employer shall provide written notice to ~~TRSthe Teachers' Retirement System~~ when the retired member's employment is terminated. The member cannot resume benefit payments under this rule and remain employed. The member must comply with the sixty (60)-day non-employment rule that applies to a member who elects ~~normal~~regular retirement. Retirement payments will be resumed effective the first of the following month, provided the necessary retirement paperwork is received within the prescribed timelines, otherwise benefits will be resumed the first of the next succeeding month. Any supplemental benefit determined pursuant to this section shall commence at the same time.

(9) If the retired member dies while engaging in half-time or more employment as provided in this section, the retired member's beneficiaries will receive any survivor benefits specified in the terms of the retirement contract elected by the member, the \$18,000 death benefit provided by OAC 715:10-9-2, if applicable, and a return of employee contributions, plus interest accumulated during the current employment, as defined in OAC 715:10-9-1. The beneficiaries of the deceased retired member will not be entitled to both the \$18,000 death benefit and the \$5,000 death benefit defined in OAC 715:10-9-4.

(10) If a retired member does not file an election to discontinue monthly benefits while employed by the public schools of Oklahoma, he or she waives the accrual of service credit and the right to any supplemental benefit from service in the position. The retired member will, however, be subject to the earnings limits outlined in Title 70, Oklahoma Statutes, Section 17-116.10 [70 O.S. 17-116.10].

(11) Retired members returning to half-time or more employment under this subchapter and section shall not be considered "active members" for purposes of purchasing or transferring any form of prior service credit of whatever nature.

(12) A retiree having received a partial lump-sum payment, who is re-employed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking into consideration that a partial lump-sum payment has been received.

## SUBCHAPTER 25. QUALIFIED DOMESTIC ORDER

### 715:10-25-2. Filing a qualified domestic order

A ~~TRS~~ member of ~~Teachers' Retirement~~, his or her legal representative, a member's former spouse, or his or her legal representative may file a qualified domestic order with

~~TRSteachers' Retirement System~~. In not less than thirty (30) days of such filing, ~~TRSteachers' Retirement~~ will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided to ~~TRSteachers' Retirement~~. All qualified domestic orders filed with ~~TRSthe Teachers' Retirement System of Oklahoma~~ must be in accordance with Oklahoma Statutes and must conform to the provisions of 70 O.S., Section 17-109, as amended. ~~An TRS approved Form 110.46 OTRS~~ Qualified Domestic Order is available on the TRS website upon request and its use is recommended.

[OAR Docket #19-537; filed 6-4-19]

## TITLE 770. OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS CHAPTER 10. CENTER DIVISION PROGRAM

[OAR Docket #19-548]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Maintenance Charges, Patient Funds and Assets  
770:10-3-1 [AMENDED]

### AUTHORITY:

Oklahoma Department of Veterans Affairs; Title 72 O.S. Section 63.1; Title 75 O.S., Section 250 et seq.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 15, 2019

### COMMENT PERIOD:

February 19, 2019 through March 18, 2019

### PUBLIC HEARING:

March 19, 2019

### ADOPTION:

March 28, 2019

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 28, 2019

### LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

### FINAL ADOPTION:

May 28, 2019

### EFFECTIVE:

August 15, 2019

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The rule will prospectively amend current regulations governing calculation of monthly maintenance charges assessed to residents of Oklahoma Veterans Centers in furtherance of the Agency's statutory authority pursuant to 72 O.S. §63.5a to field capability for billing of services to Medicare and Medicaid and to maximize payments for services from available third party coverages as follows: Defined terms or scope of services included in base monthly maintenance charge will be revised to be consistent with allowable items under Medicare and Medicaid programs. Calculation of maintenance charges will be revised to increase consistency with Medicare and Medicaid fee for services structure. Resource and income analysis will be eliminated from consideration in establishing resident maintenance charges for newly admitted residents only after the Center's certification for Medicaid funding. Authority for assessment of additional charges during absence for voluntary leave or therapeutic leave from the Center is imposed.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 15, 2019:**

**SUBCHAPTER 3. MAINTENANCE CHARGES, PATIENT FUNDS AND ASSETS**

**770:10-3-1. Care and maintenance charges**

(a) Residents of all Oklahoma Veterans Centers shall be assessed a ~~monthly~~ care and maintenance charge based upon the level of care and treatment provided to them and grant assistance or other payments received on the ~~veteran's~~ resident's behalf.

(b) The claim of the State for such care and treatment shall constitute a valid indebtedness against any such resident and his estate and shall not be barred by any statute of limitations. At the death of the resident, this claim shall be allowed and paid as other lawful claims against the estate. Failure to pay care and maintenance charges assessed is basis for discharge.

~~(bc)~~ Nursing care shall include room and board in the nursing care of the Veterans Center and the full range of medical and nursing services offered in-house at the Center. Medical and nursing services shall minimally include: staff physician services, nursing care, all required medications and their administration, all necessary x-ray and laboratory services which are performed in-house by the Center, ~~all laboratory services which are performed in-house by the Center,~~ and all required therapy services performed in-house by the Center. Nursing care does not include those medical or other services not included above which a resident requires or receives outside those provided within and by the Center, personal discretionary use items such as tobacco or the purchase of street clothes. Services provided by and through contractors or other third parties may be excluded as not performed by the Center regardless of the location of services.

~~(ed)~~ Care and maintenance charges begin on the day of admission and cease on the day of discharge. Care and maintenance charges for partial months of residency are pro-rated, except in the event of a resident's expiration at the Center. If the resident expires at the Center, the care and maintenance charge ends on the first day of the month in which an Oklahoma Veterans Center resident expires.

~~(ee)~~ Care and maintenance charges are due and payable on the first of each month for services received in the preceding month. Absent exigent circumstances as approved by the Central Office, electronic payment shall be required to satisfy monthly care and maintenance charges.

~~(ef)~~ Payments by debit card, credit card, and other means of electronic funds transfer shall be subject to the following terms:

(1) **"Nationally recognized"** credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Department of Veterans Affairs shall determine which nationally recognized credit cards will be accepted for any payments due and owing to the Department.

(2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Department.

(3) The Oklahoma Department of Veterans Affairs will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Department.

(B) If a person mails in the credit card information and credit is not available, the transaction will re-processed in accordance with any authorization executed by the cardholder. Until payment is completed, the transaction will be classified as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Department of Veterans Affairs may add an amount up to that equal to the amount of the processing, service, or convenience charges incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Department. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit verification, security, or personal identification number (PIN). The Department assumes no liability for unauthorized use of this information.

(6) **"Electronic funds transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(7) **"Electronic terminal"** means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) **"Financial institution"** means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union,

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or any other person who, directly or indirectly, holds an account belonging to another person.

(9) **"State"** means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(fg) Care and maintenance charges shall be computed to maximize pensions, compensation, and aid and attendance benefits from the United States Department of Veterans Affairs and any other federal or state assistance or payments to which the veteran-resident is entitled. Existing and prospective residents shall make application for all available benefits and assistance from federal and state government sources. Failure to do so shall result in denial of admission, discharge, or assessment of the monthly care and maintenance charge as the full cost of care, less per diem payments received from the United States Department of Veterans Affairs.

(h) Each resident shall be expected to pay each month from his or her assets, resources, or income, amounts billed for care and maintenance by an Oklahoma Veterans Center. A resident shall apply for assistance or benefits through Medicaid, if his or her available resources are insufficient to pay the entire cost of care or maintenance on a current basis, and the Center is eligible for Medicaid reimbursements.

(i) The full cost of care cited in establishment of the maintenance charge may be:

(1) a uniform rate for two or more Oklahoma Veterans Centers, which does not exceed the average cost of care across all Oklahoma Veterans Centers, or

(2) a Center specific rate that is calculated for a particular Center by using financial data for the cost of care at that Oklahoma Veterans Center.

(j) Effective on and after the date of certification of an Oklahoma Veterans Center to receive Medicaid payments, the maintenance charge assessed to each newly admitted or re-admitted resident to a Medicaid certified Center shall be calculated based on the full cost of care, less per diem payments received from the United States Department of Veterans Affairs. Maintenance charges may be assessed based on a daily or monthly rate. Further adjustments to maintenance charges may be made to conform to requirements for receipt of payments of per diem from the United States Department of Veterans Affairs, Medicare payments, or Medicaid payments.

(g) ~~Countable income shall consist of gross income, as defined by 26 U.S.C. §61, of the resident, plus that of resident's legal dependents (if any). Also included in countable income shall be attributable aid and attendance and payments in compensation or reimbursement to or on behalf of a resident as the insured under long term care insurance policies. Attributable aid and attendance shall consist of the difference between a partial award of aid and attendance and the maximum aid and attendance awardable through the United States Department of Veterans Affairs. Income or benefits paid shall be included without reduction for offsets, recoupment, judgments, past overpayments, debt repayment, automatic deductions, or withholding. Countable income shall exclude income earned~~

~~by active employment of a working spouse or other legal dependent. Income will be rounded to the nearest whole dollar when computing care and maintenance charges.~~

(h) ~~Dependents, for purposes of this rule and subsequent chapters, shall be legal spouses and minor children under the age of eighteen (18) or disabled children who became disabled prior to their eighteenth birthday or legal children through the age of twenty one (21) years who are enrolled in school full-time.~~

(i) ~~Health insurance premiums shall include premiums paid for general health, hospitalization, dental, vision, and prescription coverages for the resident, including but not limited to Medicare supplements. Health insurance premiums shall also include one half (1/2) of premiums paid for the same coverages if the resident and one or more other family members share benefits as co-insureds on joint or family coverage. Copays or deductibles shall not be considered premiums paid.~~

(j) ~~Irrevocable burial policy premiums, as used in this rule, shall include premiums paid for irrevocable burial policies that provide for the funeral, burial, or final disposition of a resident with a death benefit not to exceed Ten Thousand Dollars (\$10,000.00).~~

(k) ~~The reduction in care and maintenance charges for health insurance premiums and irrevocable burial policy premiums, when applicable, shall not be available retroactively, and shall apply prospectively from the date of receipt of documentation substantiating insurance coverage and premiums payable. Annual documentation substantiating coverage and premiums shall be required and if not furnished reductions may be discontinued until such time as documentation is received.~~

(k) ~~Monthly maintenance charges for a current—resident whose most recent admission occurs prior to September 14, 2018 shall be calculated as follows:~~

(1) ~~Computation of monthly maintenance charges shall be based on countable income, provided that the maintenance charge shall not exceed the full cost of care minus any per diem payment received from the United States Department of Veterans Affairs.~~

(A) ~~The charge for nursing care to residents who contribute to the support of legal dependents shall be fifty percent (50%) of countable income subject to reduction for health insurance premiums and irrevocable burial policy premiums paid or payable. Notwithstanding any other language under this rule, a resident shall retain not less than \$150.00 per month of total monthly income which may be allocated from the income counted as available to the resident and need not be charged against the income allocated to the non-resident spouse.~~

(B) ~~The charge for nursing care to residents who do not contribute to the support of legal dependents shall be eighty-five percent (85%) of countable income subject to reduction for health insurance premiums and irrevocable burial policy premiums paid or payable. Notwithstanding any other language under this rule, a resident shall retain not less than \$150.00 per month of total monthly income.~~

(C) When two residents are married and both reside at a Veterans Center, the maintenance charge for each will be assessed at 50% of the combined countable income subject to reduction for health insurance premiums and irrevocable burial policy premiums paid or payable. Notwithstanding any other language under this rule, when two residents are married to each other and both reside at the ~~center~~Center, each may retain not less than \$150.00 per month of total monthly income.

(2) When the care and maintenance charge assessed any resident does not result in compliance with all statutory requirements, the percentage of charge against income will be increased or decreased accordingly for compliance.

~~(3) Any resident of an Oklahoma Veterans Center or his/her guardian may seek a reduction or waiver of care and maintenance charges for (1) financial hardship resulting from unreimbursed unusual medical expenses of the veteran resident, spouse or legal dependents or (2) financial hardship on residents with dependent children. Requests for reduction or waiver of care and maintenance charges for other reasons will not be considered.~~

(m) Monthly maintenance charges for a resident whose most recent admission occurs on or after September 14, 2018 but prior to the date of certification of the Center to receive Medicaid payments shall be calculated as follows:

(1) Except as specifically authorized herein, the monthly maintenance charge for residents of the Oklahoma Veterans Centers shall be the full cost of care, less per diem payments received from the United States Department of Veterans Affairs. ~~The full cost of care cited in establishment of the monthly maintenance charge may be a uniform rate for the Oklahoma Veterans Centers, which does not exceed the average monthly cost of care across all Oklahoma Veterans Centers, or it may be calculated using specific financial data for cost of care at a single Oklahoma Veterans Center.~~

(2) Residents awarded pension as defined by 38 CFR with aid and attendance pursuant to 38 CFR §3.352 from the United States Department of Veterans Affairs shall pay a monthly maintenance charge that is the least of:

(A) Full cost of care, less per diem payments received from the United States Department of Veterans Affairs; or

(B) Eighty-five (85%) percent of countable income subject to reduction for health insurance premiums and irrevocable burial policy premium paid upon substantiation of coverage in force and premiums payable. Notwithstanding any other language under this rule, a resident shall retain not less than \$150.00 per month of total monthly income; or

(C) If contributing to support for legal dependents, fifty percent (50%) of countable income subject to reduction for health insurance premiums and irrevocable burial policy premiums or payable. Notwithstanding any other language under this rule, a resident shall retain not less than \$150.00 per month of total

monthly income which may be allocated from the income counted as available to the resident and need not be charged against the income allocated to the non-resident spouse.

(3) Admission of a surviving spouse, widow widower, or a Veteran that does not meet the United States Department of Veterans Affairs criteria as serving during a period of war as referenced in 38 U.S.C., Section 1521, may be conditioned upon ability to pay.

(4) When the care and maintenance charge assessed any resident does not result in compliance with all statutory requirements, the percentage of charge against income will be increased or decreased accordingly for compliance.

(m) The following shall govern evaluation of countable income under paragraphs (k) and (l), above:

(1) Income will be rounded to the nearest whole dollar when computing care and maintenance charges.

(2) Countable income shall include income of the resident, plus that of resident's legal dependents (if any) in the following categories:

(A) Gross income, as defined by 26 U.S.C. §61,

(B) Income earned internationally for the accounting period evaluated, whether or not reportable for income tax purposes.

(C) To the extent not included in subparagraph (m)(2)(A), all compensation, disability, and other amounts payable from private, state or federal benefit programs or grants, including but not limited to social security, department of agriculture, veterans affairs, or Native American tribes or related entities.

(D) Attributable aid and attendance, which shall consist of the difference between a partial award of aid and attendance and the maximum aid and attendance awardable through the United States Department of Veterans Affairs.

(E) Payments in compensation or reimbursement to or on behalf of a resident as the insured under long-term care insurance policies.

(3) Income or benefits paid shall be included without reduction for offsets, recoupment, judgments, past overpayments, debt repayment, automatic deductions, or withholding.

(4) Countable income shall exclude income earned by active employment of a working spouse or other legal dependent.

(n) The following are applicable only to calculation of maintenance charges under paragraphs (k) and (l) above:

(1) Dependents, for purposes of this rule and subsequent chapters, shall be legal spouses and minor children under the age of eighteen (18) or disabled children who became disabled prior to their eighteenth birthday or legal children through the age of twenty-one (21) years who are enrolled in school full-time.

(2) Health insurance premiums shall include premiums paid for general health, hospitalization, dental, vision, and prescription coverages for the resident, including but not

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limited to Medicare supplements. Health insurance premiums shall also include one half (1/2) of premiums paid for the same coverages if the resident and one or more other family members share benefits as co-insureds on joint or family coverage. Copays or deductibles shall not be considered premiums paid.

(3) Irrevocable burial policy premiums, as used in this rule, shall include premiums paid for irrevocable burial policies that provide for the funeral, burial, or final disposition of a resident with a death benefit not to exceed Ten Thousand Dollars (\$10,000.00).

(4) The reduction in care and maintenance charges for health insurance premiums and irrevocable burial policy premiums, when applicable, shall not be available retroactively, and shall apply prospectively from the date of receipt of documentation substantiating insurance coverage and premiums payable. Annual documentation substantiating coverage and premiums shall be required and if not furnished reductions may be discontinued until such time as documentation is received.

(no) Any resident, his/her guardian, spouse, or legal appointed spouse agent, who knowingly withholds or falsifies income, expense, or resource data or who withholds payment of assessed care and maintenance charges may subject the resident to discharge and forfeiture of state or federal benefits and may subject the resident, or other parties responsible, to legal action related to the recovery of valid indebtedness to the State of Oklahoma. Failure to timely or accurately report income or misrepresentation of income may also result in one or more of the following: assessment of maintenance charges at the full cost of care, loss of full or partial benefit from state or federal sources, recoupment actions, or offset against future benefits.

(op) Residents on leave from a Center for outside hospitalization or medical care shall not be charged for care and maintenance after their fourth (4th) day of absence. Residents may be discharged during absences for hospitalization and readmitted in accordance with applicable regulatory priorities, in accordance with agency policy after exhaustion of days authorized for payment of per diem by the United States Department of Veterans Affairs.

(q) Residents on leave from a center-Center for personal reasons of their own volition shall continue to be charged for care and maintenance for such period of their leave that their bed is being held open for them. Charges billable under this paragraph shall not be constrained by the income limitations on maintenance charges set forth in paragraphs (k) and (l) above. In the event that a resident incurs voluntary absences that exceed annual therapy days authorized for payment of per diem by the United States Department of Veterans Affairs, the Center shall:

(1) Reflect any and all loss of per diem payments by billing the resident in the amount of the forfeited per diem on the resident's monthly statement, or

(2) Discharge and re-admit the resident in accordance with the Center's admission priorities, including but not limited to classification as discharge against medical advice, if applicable.

(rp) Any resident of an Oklahoma Veterans Center or his/her guardian may seek a reduction or waiver of care and maintenance charges for (1) financial hardship resulting from unreimbursed unusual medical expenses of the veteran resident, spouse or legal dependents or (2) financial hardship on residents with dependent children. Requests for reduction or waiver of care and maintenance charges for other reasons will not be considered. Dependents, for purposes of this section, shall be defined as set forth in subparagraph (n)(1), above. The procedure and process for the filing and adjudication of appeals for reduction or waiver of care and maintenance charges is as follows:

(1) The request for reduction or waiver shall be made in writing to the Administrator of the Center where the veteran is a resident, by the veteran, a responsible family member of the veteran, and/or the veteran's guardian.

(2) The appealing party shall complete the appropriate Department forms, supply the Center Administrator with pertinent financial data and shall sign said form attesting to the accuracy of the information recorded thereon.

(3) The Administrator shall submit a letter to the Executive Director of the Oklahoma Department of Veterans Affairs notifying him or her of the appeal request and stating the Administrator's recommendation in the matter. Additionally, the Administrator shall attach copies of all information which describe the appealing party's financial status.

(4) The Executive Director will determine whether the appeals requests are in conformity with policy for presentation to the Oklahoma Veterans Commission and shall make a recommendation on the appeal request and forward the request to the Commission.

(5) The Commission shall consider all appeals information as presented by the Executive Director and then shall render a decision on said appeals by a majority vote.

(6) The Executive Director shall notify the appealing parties of the Commission's decisions on their appeals through the appropriate Center Administrator within five (5) working days following the Commission action, along with any appeal procedures.

(7) Adverse decisions may be appealed to an independent Administrative Hearing Officer with the Oklahoma Department of Health. The decision of the Administrative Hearing Officer will be final.

*[OAR Docket #19-548; filed 6-4-19]*

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

*[OAR Docket #19-570]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Statewide Virtual Charter School Sponsorship  
777:10-3-3 [AMENDED]

777:10-3-4 [AMENDED]  
Subchapter 5. Statewide Virtual Charter School Facilities  
777:10-5-3 [AMENDED]

**AUTHORITY:**

Statewide Virtual Charter School Board; 70 O.S., §§3-145 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 8, 2019

**COMMENT PERIOD:**

February 2, 2019 through March 4, 2019

**PUBLIC HEARING:**

March 12, 2019

**ADOPTION:**

March 12, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 14, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rule changes consist of a change to the timeline of the application process; minor cleanup language and grammatical corrections; an addition to the performance framework; cleanup and additions to the list of document submissions; and removal of language related to instruction time limits.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 3. STATEWIDE VIRTUAL CHARTER SCHOOL SPONSORSHIP**

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

(a) **Sponsorship application cycle and timelines.** To ensure that timely processing, review, and consideration of applications for sponsorship occurs within the time periods specified by 70 O.S. § 3-134, and to ensure that the application process is completed with sufficient time for new schools to comply with all statutory reporting requirements for the beginning of the next school year, (e.g., statutory state finance reporting deadlines for state aid purposes) the timeline for the application cycle for the following school year is as follows:

- (1) Completion of charter school training required by 70 O.S. § 3-134(A) prior to submission of letter of intent to submit an application;
- (2) ~~Submission of a letter of intent to submit an application by May 1 prior to the July 1 application deadline;~~

(32) Submission of a full application for statewide virtual charter school sponsorship ~~by July 1 of the year in January, eighteen (18) months~~ prior to the first year of proposed operation;

(43) Public presentation of application/proposal for sponsorship at the next regularly scheduled Statewide Virtual Charter School Board meeting;

(54) Review of application and recommendation by a team of experts in education;

(65) Statewide Virtual Charter School Board decision on application for sponsorship at a subsequent Board meeting;

(76) Submission of an amended application within thirty (30) days of receipt of notification of rejection;

(87) Board decision on amended application, if applicable, within thirty (30) days of receipt of amended application; and

(98) Negotiation and execution of a contract for sponsorship.

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

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

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

- (i) A description of the charter school program offered by the school which complies with the purposes outlined in 70 O.S. § 3-136;
- (ii) Student admission and enrollment policies and procedures;
- (iii) Management and administration of the charter school;
- (iv) Requirements and procedures for program and financial audits;
- (v) All of the requirements set forth in 70 O.S. § 3-136, including, but not limited to, compliance with all regulations of the State Department of Education pertaining to health, safety, civil rights and insurance and financial reporting and auditing requirements;
- (vi) Assumption of liability by the charter school; and
- (vii) Employment rights and personnel policies of the school required to be included in employee contracts pursuant to 70 O.S. § 3-135(B);

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

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- (C) Student grade placement, promotion, retention, and graduation requirements;
  - (D) Use and maintenance of charter school property and facilities, including:
    - (i) Virtual provider technology, course delivery and technical support;
    - (ii) Facility safety and emergency and crisis management;
    - (iii) School calendar, sample daily schedule as applicable to online learning at proposed school, school instructional hours, school holidays, dismissals and closures, attendance requirements; and
  - (E) Any other topics deemed necessary by the Statewide Virtual Charter School Board to assess the applicant's capability to administer and operate the charter school in compliance with all applicable provisions of federal and state laws and regulations to which charter schools are required to comply.
- (2) Each applicant shall:
- (A) Articulate the vision and purpose of the school.
  - (B) Articulate the mission of the school, specifying how the school will embrace and accomplish its vision and purpose.
  - (C) Describe the elements of the school program that align with and support the school's mission.
  - (D) Describe how the school will ensure education access and equity for all eligible students.
  - (E) Describe how the governing body and governing documents ensure that a functioning organization with competent governance will be sustained, including:
    - (i) lines of authority;
    - (ii) leadership roles and responsibilities;
    - (iii) governing by-laws;
    - (iv) meeting schedules for governing body;
    - (v) a list of advisory bodies;
    - (vi) external organizations applicable to school management;
    - (vii) make-up of governing body, including proof of Oklahoma residency for a majority of Board members.
    - (viii) start up plan;
    - (ix) recruitment, hiring and personnel policies, professional and staff development and training, technology capacity, system accessibility, student records and data management, student recruitment policies and procedures, admission and enrollment policies and procedures (including minimum and maximum enrollment for each contract year and proposed school calendar and sample daily schedule), promotion and graduation policies and procedures, attendance policies and procedures, student conduct and discipline plan, school safety and emergency response plan, parent and family education and engagement plan;
    - (x) school effectiveness measurement criteria; and
    - (xi) location and description of school facilities.
  - (F) Describe how the governing body will ensure a sound and stable financial condition for the school, including:
    - (i) description of the roles and responsibilities of the treasurer and financial officers, and how each has demonstrated experience in school finance or the equivalent thereof;
    - (ii) financial policies, including financial controls, and compliance with audit requirements;
    - (iii) financial plan for the first five years of operation,
    - (iv) start-up and five-year budgets and cash flow projections. The documents provided must account for the school's anticipated enrollment, as well as, a budget if the school only realizes a portion of the school's anticipated enrollment.
    - (v) anticipated fundraising plan, if applicable;
    - (vi) insurance coverage/plan; and
    - (vii) verifiable proof of secured funds for each source of revenue, and documentation to support any agreement, donation or loan that supports the budget.
  - (G) Describe how the governing body will ensure the delivery of a high-quality education program that meets academic performance for growth, proficiency, and college career readiness, including:
    - (i) grade levels served;
    - (ii) plan for program delivery and program evaluation;
    - (iii) curriculum and instructional model, including learning environment, curriculum overview, curriculum materials, instructional strategies, equipment and technology requirements, alignment with Oklahoma academic standards,
    - (iv) student assessment, including plan to measure and report student progress, and benchmarks for student learning, district/school assessments, Oklahoma School Testing Program;
    - (v) plan for support structures (e.g. online tutoring, home mentors, and technical support services in place 24x7) in addition to teacher support,
    - (vi) plan for support of diverse learners, (students at-risk for poor learning outcomes, academically behind learners, and other students identified through testing and assessments as being in need of targeted remediation, intervention, and/or support);
    - (vii) co-curricular and extracurricular activities;
    - (viii) student performance; and
    - (ix) school culture.
  - (H) Include a concise plan that details expected school growth and how the school will evolve to meet the needs of school growth.
  - (I) Demonstrate the applicant's experience in pre-kindergarten through 12<sup>th</sup> grade school operation.

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

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

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

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

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

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

(D) That each statewide virtual charter school has consistent procedures in place governing the admission, identification, evaluation, re-evaluation, parental notification, and provision of educational programs and services in compliance with applicable federal and state laws and regulations to students with special needs or unique abilities, including, but not limited to:

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

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

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

(F) That each statewide virtual charter school has consistent procedures and technology in place necessary to monitor and report student attendance,

student participation in online school activities, and any necessary instruction in accordance with the requirements of state law;

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

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

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

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

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

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

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

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

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

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

(c) **Filing, review, approval, and denial of charter school applications for sponsorship.** All applications for sponsorship shall be submitted by the governing body of the prospective charter school to the Statewide Virtual Charter

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School Board by filing an original and ~~sixteen (16)~~ten (10) copies, as well as an electronic version of the application with the Statewide Virtual Charter School Board. Upon receipt of an application for sponsorship, the Board shall stamp the application to record the date of receipt, and shall promptly submit written confirmation of the receipt of the application to the contact name and address of record of the governing body listed on the application.

(1) **Application format.**

(A) The text and attachments shall use standard one-inch margins, be clearly paginated, and use a readable font not smaller in type than 11 point.

(B) A cover page shall be labeled *Application for Initial Authorization* and include the following information:

- (i) Name of proposed school;
- (ii) Address of proposed school;
- (iii) Contact information: name, title, phone, email address;
- (iv) Application submission date; and
- (v) Name of applicant(s) and requested sponsor.

(C) A cover letter not to exceed two pages shall provide a brief overview of the proposed school.

(D) A clearly labeled table of contents shall be included setting forth all major sections (Foundation for the School Charter, Organizational Capacity, Financial Management, Education Program and Performance, Growth Plan), appendices, and page numbers.

(E) Tables, graphs, and other data provided in the application shall be clearly presented and explained and shall be relevant to the text.

(F) The application shall include signed and notarized statements from the Head of the School and the governing body members, as applicable, showing their agreement to fully comply as an Oklahoma public charter school with all statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law. In addition, the head of school and governing body members, as applicable, will guarantee to establish the components necessary to begin school operations in the State of Oklahoma on July 1 of the first year, including a public administration facility, state-approved school financial system, state-approved student information system, and secured applicable connections to state reporting systems.

(G) The application shall include documentation of applicant's completion of charter school training.

(2) **Initial review and recommendation.** Prior to consideration of the application by the Statewide Virtual Charter School Board, a review panel may be formed by the Executive Director for the purpose of developing a recommendation on the application to the Board for consideration. The panel, chaired by the Executive Director, may include representatives with expertise in the area of accreditation, education services, technology, school finance, federal programs, education law, curriculum, instruction, special education, and student information.

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

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

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

(ii) If the applicant can demonstrate previous experience in operation of a virtual charter school, whether applicant has a history of non-compliance with applicable state, federal, tribal and/or local statutes and regulations either in the State of Oklahoma or in other jurisdictions.

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

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

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

(4) **Acceptance or denial of sponsorship applications.** The Statewide Virtual Charter School Board shall review and consider the application in accordance with the timeline established pursuant to (a) of this Section, provided that a final decision on the application shall be made no later than ninety (90) calendar days from the date of receipt of the application by the Statewide Virtual Charter School Board. The Board shall promptly submit written notification of the decision of the Board, including

reasons for rejection of the application, if applicable, to the applicant via certified mail, return receipt requested, to the address of record of the governing body designated on the application.

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

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

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

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

(6) **Appeal of denial of sponsorship applications.** The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

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

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

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

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

(4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording

and reporting receipt and expenditures of public funds, including, but not limited to:

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

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

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

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

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

(F) Terms providing that the charter school will provide any and all records of the school including, but not limited to, financial records upon request by the sponsor;

(G) Terms providing that the charter school will provide any and all school records including, but not limited to, financial records from education service providers upon request by the sponsor;

(H) Terms providing that the school is subject to requests for audit by the State Auditor's office;

(I) Terms providing that the charter school shall adopt a viable conflict of interest policy and a code of ethics;

(J) Terms providing that the charter school submit three data-driven goals and measurement criteria, including one non-academic goal, and included in the Performance Framework.

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

(6) The term of the initial contract shall be effective for five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137.

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

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

(e) **Renewals of contracts for sponsorship of statewide virtual charter schools.** Renewal of a contract with a statewide virtual charter school sponsored by the Statewide

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Virtual Charter School Board shall be conducted in accordance with the requirements of the Oklahoma Charter Schools Act.

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

(A) At least one (1) year prior to expiration of the initial contract term, but no earlier than eighteen (18) months prior to the date of expiration of the contract; the governing body of the charter school may submit a proposal for renewal of the contract to the Statewide Virtual Charter School Board by filing an original and seven (7) copies, as well as an electronic version of the proposal with the Board.

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

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

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

(2) **Format for renewal application.** The renewal application shall include:

(A) Text and attachments using standard one-inch margins, clearly paginated, and using a readable font not smaller in type than 11 point.

(B) A cover page labeled *Application for Reauthorization*, including the following information:

- (i) Name of school;
- (ii) Address of school;
- (iii) Contact information: name, title, phone, email address;
- (iv) Date application approved by governing body; and
- (v) Application submission date.

(C) A cover letter no more than two pages in length providing a brief overview of the school's mission, design elements, and major challenges and accomplishments over the term of the current contract.

(D) A clearly labeled table of contents setting forth all major sections, appendices, and page numbers.

(E) Clearly labeled attachments provided in the appendix.

(F) Clearly labeled tables, graphs, and other data provided in this application in addition to an explanation of their relevance to the text.

(G) A signed and notarized statement from the Head of the School and the governing body members, as applicable, showing their consideration and approval of the reauthorization application and their agreement to fully comply, as an Oklahoma public charter school with all statute, regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education. Specifically cite agreement to abide by the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, and to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors.

(H) A single page entitled *Introduction to the School* containing, at a minimum, the following list of information:

- (i) Name of school;
- (ii) Location of School;
- (iii) Year Opened;
- (iv) Year Renewed, if applicable;
- (v) Maximum enrollment;
- (vi) Current enrollment;
- (vii) Grade span;
- (viii) Most recent accountability report information from the State of Oklahoma;
- (ix) Attendance rate;
- (x) Graduation rate;
- (xi) Recurrent enrollment;
- (xii) Dropout rate;
- (xiii) Percentage of at-risk students enrolled; and
- (xiv) Any other information the school deems necessary to include.

(3) **Information in renewal request.**

(A) In addition to the information found in the performance report, and the school's response to the performance report, if any, this reauthorization application is the school's opportunity to address each of the following components highlighting what the school believes is most important in each area:

- (i) Faithfulness to the foundation of the charter;
- (ii) Organizational capacity;
- (iii) Financial management;
- (iv) Education program and performance; and
- (v) Strategic planning.

(B) Appendices. Provide documents and related information for the term of the contract beyond those provided in the performance report and response, including examples of community and parent support of the school.

(4) **Performance report and site visit.** The sponsor of the school will issue a school performance report in accordance with State statute. The school shall have forty-five (45) days to respond to the performance report and submit any corrections or clarifications for the report. In evaluating a school's renewal request, the Board may consider the performance report, results of a site visit, and evidence provided in the school's presentation to the Board.

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

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

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

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

(C) The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

(f) **Terminations of contracts for sponsorship of statewide virtual charter schools.** The Statewide Virtual Charter School Board may terminate the contract with a statewide virtual charter school in accordance with the following procedures:

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

- (A) Failure to meet the requirements for student performance set forth in the terms of the contract;
- (B) Failure to meet the standards of fiscal management set forth in the terms of the contract;
- (C) Violations of applicable state, federal, tribal, or local laws, statutes, and/or regulations;
- (D) Other good cause as established by the Board, which may include, but shall not be limited to:

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

(ii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report student enrollment counts;

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

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

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

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

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

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

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

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

- (i) A response to the factual and legal grounds for termination set forth in the notice; and
- (ii) A summary of evidence that the school intends to submit in support of its response.

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

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

(4) **Appeals of termination.** The procedures for filing appeals to the State Board of Education shall be governed by 70 O.S. § 3-145.3 and the policies and rules adopted by the State Board of Education, with a copy of the appeal mailed to the Statewide Virtual Charter School Board.

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

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

### 777:10-3-4. Oversight and evaluation of virtual charter schools by the Statewide Virtual Charter School Board

(a) **Oversight and annual review.** The Statewide Virtual Charter School will provide ongoing oversight of the charter schools through data and evidence collection, site visits, attendance of governing board meetings, school website compliance checks, and school performance reviews. At the end of each year, schools will be subject to an annual review consisting of a compilation of performance ratings and findings that will be shared with key stakeholders. The charter school will have fifteen (15) business days to respond to the annual review in writing and such response will become part of the record. A formal review of school performance may be conducted during the contract term, as applicable. The annual review report and

any response will be posted to the SVCSB's website along with other information regarding each of the schools.

(b) **Performance framework.** The performance framework establishes accountability criteria for virtual charter schools authorized by the Statewide Virtual Charter School Board that assesses schools on their ability to operate as a sound, independent school that successfully serves all students in the areas of academic, financial, and organizational capacities. The board will use a checklist to determine if the charter school meets the standards or does not meet the standards for each criteria.

(1) Oklahoma performance measures will be used to assess the school's academic performance, including overall achievement, overall growth, subgroup achievement, subgroup growth and post-secondary readiness. Academic performance is measured via twenty-four (24) accountability indicators (see items A-X below). To meet the expectations, schools must demonstrate attainment of each indicator for each grade level and will be given weight accordingly. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below. Sub-group measures will only be applicable if the school has a minimum of ten (10) students in the sub-group.

(A) Are students achieving proficiency on statewide assessments in Reading/English Language Arts

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(B) Are students achieving proficiency on statewide assessments in Math

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency; or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(C) Are students enrolled in the school for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments

- is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (D) Are students enrolled in the school for two or more consecutive academic years achieving proficiency on statewide assessments in Math?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (E) Are students enrolled in the school for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (F) Are students enrolled in the school for three or more consecutive academic years achieving proficiency on statewide assessments in Math?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (G) Are students in the special education subgroup achieving proficiency on statewide assessments in Reading/English Language Arts?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments
- is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (H) Are students in the special education subgroup achieving proficiency on statewide assessments in Math?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (I) Are students in the special education subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (J) Are students in the special education subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Math?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.
- (K) Are students in the special education subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?  
(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma

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School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or  
(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(L) Are students in the special education subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(M) Are students in the economically disadvantaged subgroup achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(N) Are students in the economically disadvantaged achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(O) Are students in the economically disadvantaged subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma

School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(P) Are students in the economically disadvantaged subgroup enrolled for two or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(Q) Are students in the economically disadvantaged subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Reading/English Language Arts?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(R) Are students in the economically disadvantaged subgroup enrolled for three or more consecutive academic years achieving proficiency on statewide assessments in Math?

(i) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is equal to or above the state level of proficiency;  
or

(ii) The percentage of students scoring proficient or above at each grade level on the Oklahoma School Testing Program (OSTP) state assessments is improved 5% or greater each year over the baseline score established the first year of the charter contract term.

(S) Based on state expectations for student graduation within four years, does the school meet the expectations for student graduation?

- (i) The school's most recent graduation rate is equal to or greater than the most recent graduation rate for the State of Oklahoma or
  - (ii) The school's most recent graduation rate increased 20% or more of the difference between the graduation rate of the baseline year and 100% over the past two years.
  - (T) Based on the extended-year adjusted graduation rate, does the school meet the expectations for student graduation? Evidence indicates a majority of extended-year students graduating.
  - (U) Did the school meet the expectation for graduating eligible seniors during the most recent year? The percent of eligible seniors enrolled on the first day of the school year and graduating in the current school year is equal to or greater than the current graduation rate for the State of Oklahoma.
  - (V) Are the school's students participating in the American College Testing (ACT) college preparation assessment process? The most recent year's American College Testing (ACT) participation rate is equal to or greater than the most recent rate recorded for the State of Oklahoma.
  - (W) Does the school's student performance on the American College Testing (ACT) meet the state performance level? The school's most recent year's average composite American College Testing (ACT) score is equal to or greater than the most recent average score recorded for the State of Oklahoma.
  - (X) Are students benefiting from college and career readiness opportunities (i.e. college preparatory coursework, Career Technology programs, military service)? Evidence provides a profile of college and career readiness opportunities.
  - (Y) Is the school's college remediation rate equal to or less than the state remediation rate? The three-year average remediation rate of high school graduating classes indicates the school's college remediation rate is equal to or less than the state remediation rate.
- (2) Fiscal viability of the schools is measured through audit findings, quarterly financial reports, and financial reporting. Financial performance is measured via six (6) accountability indicators (see items A-F below). To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.
- (A) Did the most recent audit have findings? There were no findings of significant deficiencies, material noncompliance or known fraud on the school's most recent independent financial audit.
  - (B) Did any of the school's audits over the term of the contract have findings? There were no findings of significant deficiencies, material noncompliance or known fraud on any independent financial audits over the term of the charter contract?
  - (C) Did the school consistently submit appropriate quarterly financial reports over the most recent year?

- Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, on time, and indicating financial stability of the school.
- (D) Did the school consistently submit appropriate quarterly financial reports over the term of the charter contract? Appropriate reports were submitted in the Oklahoma Cost Accounting System (OCAS) format, on time, and indicating financial stability of the school.
  - (E) Did the school consistently meet financial reporting expectations over the most recent year, as required by the State Department of Education and confirmed by the Office of Financial Accounting, Oklahoma Cost Accounting System (OCAS), and Audits? Financial reporting met expectations over the most recent year.
  - (F) Did the school consistently meet financial reporting expectations over the term of the charter contract, as required by the State Department of Education and confirmed by the Office of Financial Accounting, Oklahoma Cost Accounting System (OCAS), and Audits? Financial reporting met expectations over the term of the charter contract.
- (3) Organizational performance is measured by effective organizational structure, governance, record of compliance, attendance, recurrent enrollment, accreditation and student support. Organizational performance is measured via ~~eighteen~~ <sup>(18)</sup> the accountability indicators listed (see items A-W below). To meet the expectations, schools must demonstrate attainment of each indicator. Indicators and measurements required to demonstrate that each standard has been met for achievement in each category are listed below.
- (A) Is the school faithful to its mission and implementing key design elements within the approved charter contract? Evidence documents faithfulness to the school's mission and implementation of key design elements of school.
  - (B) Does the school follow appropriate procedures to ensure student access and equity? Data confirms appropriate procedures to ensure student access and equity.
  - (C) Does the school have approved and appropriate policies and procedures that ensure student and staff safety and success, and does the school communicate those policies and procedures to students/families and staff? Approved and appropriate policies and procedures are implemented and communicated.
  - (D) Does the school adhere to applicable state and federal laws and regulations? Evidence suggests the school adheres to state and federal laws and regulations.
  - (E) Does the school adhere to the terms of the charter contract? Evidence suggests the school adheres to the charter contract.
  - (F) Does a stable governing board exist? History of board stability exists.

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(G) Does the governing board recruit, select, orient and train members with skills and expertise to enable them to govern the school appropriately? Board agendas and minutes document board member activities.

(H) Does the charter school comply with the Open Meeting Act and Open Records Act? The charter school consistently complies with requirements of the Open Meeting Act and Open Records Act.

(I) Does the charter school provide transparency through Statewide Virtual Charter School Board access to school records? The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(J) Does the educational service provider(s) provide transparency through Statewide Virtual Charter School Board access to school records? The charter school has provided the Statewide Virtual Charter School Board with all requested school records.

(K) Did the school consistently meet the reporting expectations as required by the State Department of Education during the most recent year? The State Department of Education confirms reporting expectations fulfilled.

(L) Did the school consistently meet the reporting expectations as required by the State Department of Education over the term of the charter contract? The State Department of Education confirms reporting expectations fulfilled.

(M) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board during the most recent year? Reporting expectations fulfilled as required - 90% or above in both on-time and accuracy categories.

(N) Did the school consistently meet the reporting expectations as required by the Statewide Virtual Charter School Board over the term of the charter contract? Reporting expectations fulfilled as required - 90% or above in both on-time and accuracy categories.

(O) Does the school website meet the standards for transparency and documentation as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board? The school has consistently met requirements for school website as mandated by the Oklahoma School District Transparency Act and requested by the Statewide Virtual Charter School Board.

(P) Did the school receive accreditation from the State Department of Education in the most recent year? The school received accreditation with no deficiencies noted from the State Department of Education in the most recent year.

(Q) Did the school receive accreditation from the State Department of Education over the term of the charter contract? The school received accreditation with no deficiencies noted from the State Department of Education over the term of the charter contract.

(R) Does the school meet the expectations for student attendance? Evidence documents the school met the expectations for student attendance.

(S) Does recurrent enrollment of students meet expectations? The school's student recurrent enrollment rate meets the expectations indicated by the methodology used for public schools in Oklahoma.

(T) Does the school provide support structures for students and families that are accessible twenty-four (24) hours per day and seven (7) days per week, such as teacher support, individualized learning plans, guidance/counseling program, online tutoring and technical support? Students and families have access to multiple support structures twenty-four (24) hours per day and seven (7) days per week.

(U) The charter school will submit up to three (3) data-driven goals and measurement criteria for approval by the SVCSB.

(i) Did the charter school meet the expectations of Goal One over the term of the charter contract?

(ii) Did the charter school meet the expectations of Goal Two over the term of the charter contract?

(iii) Did the charter school meet the expectations of Goal Three over the term of the charter contract?

(4) A Performance Framework Index will be calculated based on the following categories:

(A) Academic (A) Calculation - (Score) \* (Weight) = A with at weight of 33.33%.

(B) Financial (F) Calculation - (Score) \* (Weight) = F with at weight of 33.33%.

(C) Organizational (O) Calculation - (Score) \* (Weight) = O with at weight of 33.33%.

(D) Performance Framework scores will guide reauthorization procedures.

(i) A Performance Framework Index (PFI) score of 80% or higher calculated over the course of the charter contract term will result in renewal of authorization for a five (5) year term should the governing board of the charter school choose to submit a letter requesting reauthorization.

(ii) A Performance Framework Index (PFI) score of 70% or higher calculated over the course of the charter contract term is expected. However, an application for renewal of authorization is required for consideration by the Statewide Virtual Charter School Board.

(iii) A Performance Framework Index (PFI) score of less than 70% calculated over the course of the charter contract term places the charter school at risk of non-approval of the renewal for authorization. An application for reauthorization is required for consideration by the Statewide Virtual Charter School Board.

- (E) In the event data is not available, the Statewide Virtual Charter School Board will designate corresponding score with "Not Applicable".
- (c) **Submission of school data.** To aid the Statewide Virtual Charter School Board in assessing whether the schools are meeting the expectations of the performance framework, schools are required to submit school data to the Statewide Virtual Charter School Board through an online data collection system.
- (1) Schools must submit the requested documentation according to the instructions for the submission by the due date indicated in the online data collection system:
    - (A) Current charter contract and any amendments;
    - (B) Management contracts;
    - (C) Lease/purchase agreements;
    - (D) Annual budget;
    - (E) Audit documents (audit, response, corrective action);
    - (F) School performance review report response;
    - (G) Key design elements of school report and evidence of implementation;
    - (H) College preparation coursework report;
    - (I) Career technology programs report;
    - (J) Senior graduation report;
    - (K) Current inventory report;
    - (L) Quarterly financial statements;
    - (M) Handbooks (Student/family handbook, Employee handbook);
    - (N) School calendar;
    - (O) Student support documentation;
    - (P) Internal assessment plan;
    - (Q) School policies (attendance, employment, enrollment/lottery);
    - (R) Current Governing governing Board board rosters, including personal contact information, submit updated rosters as changes are made;
    - (S) Insurance verification;
    - (T) Enrollment counts (initial, monthly and final);
    - (U) Surety bond verification;
    - (V) Accreditation application and status;
    - (W) First Quarter statistical Statistical report Report summary;
    - (X) Board meeting calendar, agendas, approved minutes and supporting board meeting documents;
    - (Y) Plan for Improvement (if applicable);
    - (Z) Final state aid and federal allocations;
    - (AA) ACT profile Profile report Report;
    - (BB) Military service report;
    - (CC) Four (4) year cohort and extended year graduation rate documents;
    - (DD) Annual statistical Statistical report Report summary;
    - (EE) Strategic planning documents;
    - (FF) Oklahoma School Testing Program (OSTP) documentation;
    - (GG) Child counts;
    - (HH) Enrollment file;
    - (II) Estimate of Needs ~~and Supplemental Estimate;~~

- (JJ) Supplemental Estimate of Needs (if applicable);
  - (~~JJKK~~) Litigation documents;
  - (~~KKLL~~) State accountability report;
  - (~~LLMM~~) School—Organizational organizational Chart chart; and
  - (~~MMNN~~) Comprehensive Exit Report;
  - (OO) Current by-laws;
  - (PP) Final Employee Compensation Report;
  - (OO) College remediation data
  - (RR) Revenue and Expenditure Report
- (2) In the event submission through the online system is not possible, the school must hand-deliver hard-copy documentation to the office of the Statewide Virtual Charter School Board by the due date.
  - (3) Failure to submit the documentation is grounds for termination of the contract.
  - (4) Receipt of document submissions does not necessarily indicate approval of the content of the data.
- (d) **School website compliance.** In order to aid in transparency, charter schools sponsored by the Statewide Virtual Charter School Board will be subject to website compliance checks at any time. The schools must have the following information available on its website:
- (1) Governing board members (board member information, and office held if any);
  - (2) Schedule of governing board meetings as submitted to the Oklahoma County Clerk;
  - (3) Board meeting agendas;
  - (4) Board meeting approved minutes;
  - (5) School accountability reports; and
  - (6) Financial documents or a link to the Oklahoma Cost Accounting System (OCAS), in compliance with Oklahoma statute, including:
    - (A) ~~District expenditure data;~~
    - (B) ~~Identification of school district; and~~
    - (C) ~~Oklahoma Cost Accounting System (OCAS) Code designation for each expenditure.~~

## SUBCHAPTER 5. STATEWIDE VIRTUAL CHARTER SCHOOL FACILITIES

- 777:10-5-3. Statewide virtual charter school sites**
- (a) **Face-to-face instruction.** No statewide virtual charter school or employee of the statewide virtual charter school shall provide face-to-face instruction to any charter school student unless: ~~(1) The the~~ instruction occurs at either:
- (A~~1~~) The legal residence of a student or the parent/legal guardian of a student; or
  - (B~~2~~) A facility approved as a charter school site of the statewide virtual charter school in which the student is enrolled; ~~and~~
- ~~(2) The instruction is limited to no more than nine (9) hours per week of instruction per student.~~
- (b) **Approval of statewide virtual charter school sites.** The Board may approve a charter school site if the following conditions have been met:

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- (1) The statewide virtual charter school submits an application at least sixty (60) days prior to beginning face-to-face instruction at the facility;
- (2) The facility complies with all federal and state statutes and regulations governing safety that are applicable to public school facilities; and
- (3) The facility has been approved by the State Department of Education Office of Accreditation.

(c) **Reporting of approved statewide virtual charter school sites.** No later than July 1 prior to each school year, each statewide virtual charter school shall provide the State Department of Education with a list of all approved statewide virtual charter school sites. A statewide virtual charter school shall not be eligible to obtain funding for instruction provided at any statewide virtual charter school site not approved and reported in accordance with the provisions of this Section and all other applicable statutes and regulations pertaining to charter school facilities.

(d) **Transportation supplement funding.** A statewide virtual charter school shall not be eligible to receive transportation supplement funding for transportation to a statewide virtual charter school site in accordance with the provisions of 70 O.S. § 3-141 for any school year without a written transportation plan approved by the Statewide Virtual Charter School Board. The statewide virtual charter school shall submit its approved transportation plan to the State Department of Education Office of State Aid no later than July 1 prior to the school year for which the transportation plan has been approved.

[OAR Docket #19-570; filed 6-7-19]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #19-571]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

785:5-1-9. Dam safety and inspection fees [AMENDED]

785:5-1-11. Well driller and pump installer licensing fees [AMENDED]

785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1085.4.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET

### SECRETARY:

November 6, 2018

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February 22, 2019

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### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended Oklahoma Administrative Code ("OAC") 785:5-1-9 to increase the existing amounts for filing fees for two categories of applications to construct, enlarge, alter, or repair dams based on an estimated cost of the project. The circumstances creating the need for the proposed amendments include the need for additional revenues to maintain current level of effort to implement the program and process applications in an efficient manner.

The Board has also amended OAC 785:5-1-11 to create a new fee associated with the filing of an Intent to Drill for marginal water well construction. Marginal water well construction was recently authorized by new statutory provisions and the agency intends to review and process each Intent to Drill and supporting documentation within two business days. The new fee will be based on the estimated staff time necessary to review and process documents submitted in support of the Intent to Drill.

The Board has also amended OAC 785:5-1-14 relating to applications to amend groundwater permits to add fees based on the amount of additional water sought to be authorized under such amendment applications. The circumstances creating the need for the proposed amendments include the need to charge the same fees for applications to amend groundwater permits as are charged for new groundwater permit applications which seek to use the same amount of water. Amendments to groundwater permits which seek to add additional water require an identical amount of effort by staff as new applications for new groundwater permits, and the additional revenue to ensure uniform effort to implement the program and to continue to process amendment applications in an efficient manner.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:5-1-9. Dam safety and inspection fees

(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

(1) \$99,999 or less estimated cost - ~~\$200.00~~ \$500.00

(2) \$100,000 through 19,999,999 estimated cost - One-half of one percent (0.5%) of estimated cost; not to exceed ~~\$3,000~~ \$5,000.00.

(3) \$20,000,000 or greater estimated cost - \$10,000.

(b) Fees for inspections of dams classified as low or significant hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel are as follows:

(1) Small (see 785:25-3-3) - \$250.00 for each inspection visit.

(2) Intermediate (see 785:25-3-3) - \$500.00 for each inspection visit.

- (3) Large (see 785:25-3-3) - \$1000.00 for each inspection visit.
- (c) Fees for inspections of dams classified as high hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel shall be the actual cost of such inspection.
- (d) The fee required for issuance of a certificate of completion is \$25.00 plus if applicable, the inspection fee set out in subsection (b) or (c) of this Section.
- (e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:
  - (1) Significant hazard dams - \$300 once every three (3) years
  - (2) High hazard dams - \$350 each year; provided that if the inspection report and fee is not submitted by the date specified, an additional fee of \$50.00 will be due.

**785:5-1-11. Well driller and pump installer licensing fees**

- (a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be \$300.00 for two years.
- (b) The license application fee for each additional activity shall be \$40.00 for two years.
- (c) The application fee for each additional operator certificate which includes certification to conduct one activity shall be \$60.00 for two years.
- (d) The application fee for each additional activity under an operator certificate shall be \$30.00.
- (e) The renewal fee for each license for one certified activity, which shall include the operator certification shall be \$250.00 if the application to renew is filed by May 31; provided that a late fee of \$150.00 shall be due for the completed license renewal application if received by the Board after May 31 of the year to be renewed, but before the end of the applicable grace period.
- (f) The license renewal fee for each additional activity shall be \$40.00 for a two (2) year period.
- (g) The fee for each additional operator certification renewal which includes certification to conduct the authorized activities shall be \$40.00 for a two (2) year period.
- (h) The fee for examination of any operator shall be \$50.00.
- (i) The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be \$50.00.
- (j) The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than \$500.00 for two years.
- (k) The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be \$200.00 for a two (2) year period.
- (l) The initial fee for the Indemnity Fund for each additional activity certified under 785:35-3-1 shall be \$75.00 for a two (2) year period.

- (m) The renewal fee for the Indemnity Fund for each activity certified under 785:35-3-1 shall be \$75.00 for a two (2) year period.
- (n) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells, heat exchange wells or test holes in Chapter 35 in this Title shall be \$50.00.
- (o) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be \$150.00.
- (p) The fee to file an intent to drill for marginal water well construction shall be \$500.00.

**785:5-1-14. Stream Water and Groundwater petition fees**

Stream water and groundwater petition fees are as follows:

- (1) For the filing of a petition to amend a permit or water right which does not require notice to be given - \$100.00
- (2) For the filing of a petition to transfer ownership or record assignment of a permit or water right or Information Sheet regarding domestic use of stream water from federal reservoirs - \$100.00
- (3) For the filing of a petition to subdivide the ownership or record partial assignment of a permit or water right - \$100.00
- (4) For filing a petition for extension of time for commencement of any works for the taking of stream water - \$100.00
- (5) For filing of a petition regarding addition or deletion of land from an irrigation district - \$100.00
- (6) ~~For filing of all other petitions to amend a permit or water right for which notice must be given - \$200.00~~ For filing of a petition to amend a permit or groundwater right requesting additional water, a filing and application fee based on the additional amount requested must be submitted with each amendment application as follows:
  - (A) 1 through 320 acre-feet - \$200.00
  - (B) 321 through 640 acre-feet - \$350.00
  - (C) 641 through 1,500 acre-feet - \$450.00
  - (D) More than 1,500 acre-feet - \$450.00, plus an additional \$150 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
- (7) For filing of all other petitions to amend a permit or water right for which notice must be given - \$200.00.

[OAR Docket #19-571; filed 6-7-19]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #19-572]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

785:30-1-2. Definitions [AMENDED]

Subchapter 3. Permit Application Requirements and Processing

785:30-3-5.1. Prohibition to issuance or amendment of permit and waiver [REVOKED]

785:30-3-6. Well spacing [AMENDED]

Subchapter 7. Amendments to Groundwater Rights

785:30-7-4. Adding or replacing a well for the purpose of exercising prior rights or existing permits [AMENDED]

Appendix A. Application for a Permit to Use Groundwater [REVOKED]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; 82 O.S., § 1020.7

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 6, 2018

### COMMENT PERIOD:

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### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended Oklahoma Administrative Code ("OAC") 785:30-1-2 to add a definition for "marginal water" and to expand the definition of "groundwater" to include marginal water. The changes are necessary to conform the administrative rules to recent statutory changes authorizing the Board to monitor and regulate marginal water wells.

The Board also revoked OAC 785:30-3-5.1, which contained provisions regarding groundwater permits for swine animal feeding operations. The statutory provisions authorizing this section, 82 O.S. § 1020.11a, were repealed in 2011, and the section no longer has any application within the Board's implementation of the program.

The Board also amended OAC 785:30-3-6 to allow the Board to implement well spacing rules for unstudied groundwater basins. The changes are intended to implement recent legislative amendments to Oklahoma Groundwater Law (Senate Bill 1294) which authorized the Board to enact well spacing rules over basins for which no maximum annual yield has been determined.

The Board also amended OAC 785:30-3-6 to expand the list of identified springs discharging more than 50 gallons per minute and emanating from a sensitive sole source groundwater basin to include springs identified in the United States Geologic Survey's National Water Information System database which were not listed in Appendix D.

The Board also amended OAC 785:30-7-4 to allow holders of groundwater permits to add additional wells to their existing permit on land owned or leased by the permit holder or with written permission from the landowner. This change is intended to reconcile differences in well location requirements between new permit applicants and existing permit holders in the Board's rules

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE  
DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:30-1-2. Definitions

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

**"Agricultural use"** means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

**"APA"** means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S., §§301 et seq., as amended.

**"Application"** means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

**"Artificial recharge"** means any man-made process specifically designed for the primary purpose of increasing the amount of water entering into a groundwater basin or subbasin.

**"Beneficial use"** means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Commercial use"** means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

**"Dedicated land"** means the tract or tracts of land which the applicant owns, leases, or from which the applicant holds a valid right to withdraw groundwater and which is listed in the application and used to calculate the amount of groundwater requested.

**"Definite stream"** means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

**"Domestic use"** means the use of water by a natural individual or by a family or household for household purposes, for

farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

**"Enhanced recovery of oil and gas"** means a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or under short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

**"Equal proportionate part or share"** means the maximum annual yield of water from a groundwater basin or subbasin which shall be allocated to each acre of land overlying such basin or subbasin. It shall be that percentage of the maximum annual yield, determined as provided by 82 O.S., §1020.5 and 785:30-9-2 which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which is owned or leased by an applicant for a regular permit.

**"Fresh water"** means *water which has less than five thousand (5,000) parts per million total dissolved solids. All other water is salt water.* [82:1020.1(7)]

**"Groundwater"** means *fresh and marginal water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.* [82:1020.1(1)]

**"Groundwater basin"** means *a distinct underground body of water overlain by contiguous land having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(3)] The area boundaries of a major or minor basin can be determined by political boundaries, geological, hydrological, or other reasonable physical boundaries.

**"Groundwater subbasin"** means *a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(4)] Examples are a lateral or vertical subdivision of a groundwater basin delineated by either physical or political boundaries. Physical boundaries would be different in geological, hydrological or yield capabilities; bedrock; faults; low permeability zones or limits of pressure areas, etc. Political boundaries would be irrigation districts, planning districts, counties, city limits, etc.

**"Industrial use"** means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

**"Irrigation use"** means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

**"Life of a groundwater basin or subbasin"** means that period of time during which at least fifty (50) percent of

the total overlying land of the basin or subbasin will retain a saturated thickness allowing pumping of the maximum annual yield for a minimum twenty (20) year life of such basin or subbasin, provided that after July 1, 1994, the average saturated thickness will be calculated to be maintained at five feet (5') for alluvium and terrace aquifers and fifteen feet (15') for bedrock aquifers unless otherwise determined by the Board; provided further that after July 1, 1994, whether fifty (50) percent of the total overlying land of the basin or subbasin retains a saturated thickness allowing pumping for a minimum twenty (20) year life of the basin or subbasin need not be considered by the Board.

**"Major groundwater basin"** means *a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and from which groundwater wells yield at least fifty (50) gallons per minute on the average basinwide if from a bedrock aquifer and at least one hundred fifty (150) gallons per minute on the average basinwide if from an alluvium and terrace aquifer, or as otherwise designated by the Board.* [82:1020.1(3)]

**"Marginal Water"** means water which has at least five thousand (5,000) and less than ten thousand (10,000) parts per million total dissolved solids.

**"Maximum annual yield"** means a determination by the Board of the total amount of fresh groundwater that can be produced from each basin or subbasin allowing a minimum twenty (20) year life of such basin or subbasin.

**"Mining use"** means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

**"Minor groundwater basin"** means *a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and which is not a major groundwater basin.* [82:1020.1(9)]

**"Municipal and rural water use"** means the use of water by a municipality, rural water district, water corporation, or community for the promotion and protection of safety, health and comfort, distribution to natural persons for the maintenance of life and property, public and private business pursuits, and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

**"Natural recharge"** means all flow of water into a groundwater basin or subbasin by natural processes including percolation from irrigation.

**"Notice by publication"** means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

**"Party or interested party"** means *a person or agency named and participating, or properly seeking and entitled by law to participate,* [75:250.3(7)] in hearings other than hearings on Board rules, regulations and standards.

**"Permittee"** means the person to whom a permit to use water has been issued by the Board or the person to whom such

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permit has been duly and properly transferred under Board rules.

**"Person"** means any individual, firm, partnership, association, corporation, business or public trust, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

**"Power use"** means water used for power generation, including, but not limited to, fossil-fueled electric power generation.

**"Prior groundwater right"** means the right to use ground water established by compliance with the laws in effect prior to July 1, 1973, the effective date of the Groundwater Act, and determined pursuant to 82 O.S., §1020.14 and Subchapter 11 of this Chapter.

**"Public water supply"** means the use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal and rural water use."

**"Recreation, fish and wildlife use"** means use which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

**"Salt water"** means any water containing more than five thousand (5,000) parts per million total dissolved solids.

**"Sensitive sole source groundwater basin or sub-basin"** means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency, and includes any portion of an contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin [82:1020.9A].

**"Special use"** means and includes but is not limited to the use of groundwater for groundwater heat pump systems or artificially recharging a groundwater basin or subbasin.

**"Total discharge from the basin or subbasin"** means and shall include but may not be limited to the amount of fresh groundwater withdrawn and placed to beneficial use prior to July 1, 1973, which amount shall be determined from the applicable final orders of the Board determining prior groundwater rights.

**"Waste by depletion"** means unauthorized use of wells or groundwater; [d]rilling a well, taking, or using fresh groundwater without a permit, except for domestic use; [t]aking more fresh groundwater than is authorized by the permit; [t]aking or using fresh groundwater in any manner so that the water is lost for beneficial use; [t]ransporting fresh groundwater from a well to the place of use in such a manner than there is an excessive loss in transit; [u]sing fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well ... drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board; [82:1020.15(A)] or [u]sing fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water [82:1020.15(A)].

**"Waste by pollution"** means [p]ermitting or causing the pollution of a fresh water strata or basin through any act

which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin ... or [f]ailure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof [82:1020.15(A)].

**"Water right"** means a right to the use of stream or groundwater for beneficial purposes.

**"Water supply"** means a natural body of water, whether static or moving either on or under the surface of the ground, or in a man-made reservoir, available for beneficial use on a reasonably dependable basis.

**"Well"** means any type of excavation for the purpose of obtaining groundwater or to monitor or observe conditions under the surface of the earth but does not include oil and gas wells.

### SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

#### 785:30-3-5.1. Prohibition to issuance or amendment of permit and waiver [REVOKED]

(a) ~~Except for renewals, the... Board shall not issue any permit or amendment thereto or other authorization for the use of water for any swine animal feeding operation wholly or partially located within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization.~~

(b) ~~The provisions of this subsection shall apply only if the real property was owned or leased by such organization prior to the construction or establishment of the swine animal feeding operation.~~

(c) ~~The setback requirement contained in subsection (a) of this section shall not apply to any property owner who executes a written waiver with the owner or operator of the swine feeding operation, under such terms and conditions as are agreed to by the parties. The written waiver shall be effective upon recording of the waiver in the office of the county clerk of the county in which such property is located.... A change in ownership of the applicable property or change in ownership of the property on which the swine feeding operation is located shall not affect the validity of the waiver [82:1020.11a].~~

(d) For purposes of this section, the following shall apply:

(1) Nonprofit organizations include but are not limited to organizations recognized by the Internal Revenue Service as tax exempt pursuant to Section 501(c) of the federal Internal Revenue Code, organizations registered with the Oklahoma Secretary of State as a nonprofit corporation or otherwise pursuant to Title 18 of the Oklahoma Statutes, and federal, state and local governments.

(2) The boundary of the swine animal feeding operation shall be considered the outside perimeter of any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof covered structures housing animals, composters, waste storage sites, or retention structures or appurtenances or additions thereto.

(3) The outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization:

(A) for governments, shall be considered that line drawn along the outside perimeter of any tract or tracts of land designated as a wildlife management area, wildlife refuge, park, camping or recreational site shown on U.S.G.S. topographic or other widely disseminated maps or other information submitted to the Board; and

(B) for all other nonprofit organizations, shall be presumed to be the outside boundary of the tract of land on which the area or facility used as a camp or recreational site by such organization is located.

(4) In making the factual determination whether a given parcel of land is owned or operated as a camp or recreational site by a nonprofit organization, the Board shall consider the following factors:

(A) the manner of use, including but not limited to camping, cooking, picnicking, hiking, swimming, wading, boating, fishing, team sports, or other leisure or play activities;

(B) whether the area or site features permanent equipment or fixtures such as cabins, picnic tables, grills, playground equipment, swimming pools, or playing fields;

(C) the regularity, frequency and duration of use for camping or recreational purposes by the nonprofit organization, its members or invitees;

(D) the number of persons who use the land under the authority of the nonprofit organization for camping or recreational purposes; and

(E) whether the nonprofit organization holds the land on which the camp or recreational site lies by a deed or lease filed of record in the county clerk's office.

(e) With the filing of their applications or as soon as possible thereafter, applicants for permits or amendments to existing permits to use groundwater for swine production shall provide information about areas or facilities owned or operated as camps or recreational sites by nonprofit organizations that may exist within three miles of the swine animal feeding operation and shall submit copies of any written waivers obtained pursuant to Section 1020.11a of Title 82 of the Oklahoma Statutes. The notice of the application for new permit or to amend an existing permit for swine production shall contain a statement that no known areas or facilities owned or operated as camps or recreational sites by nonprofit organizations exist within three miles of the swine animal feeding operation, or that written waivers have been obtained from owners or operators of such areas or facilities.

(f) In addition to other notice required by this Chapter of the rules, the applicant shall be required to provide notice by certified mail, return receipt requested, to all record owners or lessees of the surface estate of lands located wholly or partially within three miles of the outside boundary of the swine animal feeding operation. Evidence of such mailing shall be provided by an affidavit certifying such mailing and including a list of

names and addresses of those persons to whom the notice was mailed. Return receipt cards shall be made available upon request of staff of the Board or the Hearing Examiner.

**785:30-3-6. Well spacing**

(a) **Spacing requirements.** Within bedrock groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. Within alluvium and terrace groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. These well spacing provisions shall not be applicable to plugged or abandoned wells or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed.

(1) Within bedrock groundwater basins or subbasins where the maximum annual yield has been determined, no new or proposed well(s) shall be authorized by regular permit to be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(2) Within alluvium and terrace groundwater basins or subbasins where the maximum annual yield has been determined, no new or proposed well(s) shall be authorized by regular permit to be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(3) For applications filed on or after October 1, 2019 within minor bedrock groundwater basins or subbasins, no new or proposed well(s) shall be authorized by temporary permit to be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(4) For applications filed on or after October 1, 2019 within minor alluvium and terrace groundwater basins or subbasins, no new or proposed well(s) shall be authorized by temporary permit to be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(5) Spacing requirements for major bedrock basins or subbasins and for major alluvium and terrace basins or

## Permanent Final Adoptions

subbasins may be imposed on new or proposed wells requested to be authorized by applications for temporary permits filed on or after October 1, 2019, and after the Board has conducted at least one public hearing on the spacing setback provisions at a location within or in close proximity to the major basin or subbasin pursuant to Section 1020.17 of Title 82 of the Oklahoma Statutes.

(6) These well spacing provisions shall not be applicable to plugged or abandoned wells, or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed, provided further that the well spacing provisions shall not be applicable to proposed wells on lands of another if the proposed wells on lands of another are no longer authorized pursuant to 785:30-5-5(a)(9).

(b) **Location exceptions.** A location exception shall be granted if the person requesting the exception shows and the Board determines in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, and that notice, as set forth in 785:30-3-4, of the location exception request is provided. ~~The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:~~

~~(1) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.~~

~~(2) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.~~

~~(3) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination and which does not meet the spacing requirements of (a) of this section.~~

~~(4) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.~~

(1) The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:

(A) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.

(B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.

(C) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination or prior to October 1, 2019 within temporary basins and which does not meet the spacing requirements of (a) of this section.

(D) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.

(2) Criteria and conditions for location exceptions may include compliance with terms to prevent unreasonable impact on other wells within the spacing distance, including:

(A) the rate and timing of the withdrawal of groundwater;

(B) the depth of perforation of the groundwater well; and,

(C) the depth of sealing of the well.

(c) **Well spacing within a sensitive sole source groundwater basin.**

(1) Within a sensitive sole source groundwater basin where the maximum annual yield has been determined:

(A) No new or proposed well shall be drilled and completed within a one thousand three hundred twenty feet (1320') radius of a spring that flows 50 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter or in the National Water Information System database of the United States Geological Survey (USGS);

(B) No new or proposed well shall be drilled and completed within a two (2)-mile radius of a spring that flows 500 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter or in the National Water Information System database of the United States Geological Survey (USGS), unless the Board first determines that the total amount of groundwater authorized to be used from all wells within that radius is no more than 1600 acre feet per year; and

(C) No new or proposed well shall be drilled and completed within one (1) mile of a stream segment considered to be perennial in the U.S. Geological Survey's National Hydrology Dataset and with a base flow of 500 gallons per minute that emanates from the basin.

(2) Provided, an applicant may obtain an exception from the provisions of paragraph (1) of this subsection (c) if:

(A) The applicant first demonstrates to the satisfaction of the Board that the cumulative impact of pumping from the new or proposed well together with authorized pumping from existing and proposed wells will not cause a reduction of more than 25% of the base flow of the subject spring or stream; or

(B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the provisions of paragraph (1) of this subsection (c).

(3) Notwithstanding any other provision of this subsection (c), the Board shall not authorize any new or proposed well within a sensitive sole source groundwater basin where the maximum annual yield has been determined if

the use of that well *is likely to degrade or interfere with springs or streams emanating in whole or in part from* [82:1020.9(A)(1)(d)] the basin.

**SUBCHAPTER 7. AMENDMENTS TO GROUNDWATER RIGHTS**

**785:30-7-4. Adding or replacing a well for the purpose of exercising prior rights or existing permits**

(a) **Additional wells.**

(1) The holder of a permit or prior right may make a written petition to the Board for approval of an additional well(s) where such well(s) is or are necessary in order to withdraw the amount authorized by the existing permit. If ownership of the land, permit or prior right changes after the petition is filed, the petitioner must promptly notify the Board and notice of such change may be required.

(2) The petition shall be filed prior to drilling the well(s) on forms provided by the Board and shall be accompanied by a map or plat (see APPENDIX A of this Chapter). The additional well(s) must be located on lands dedicated to the permit to take and use groundwater from the same groundwater basin, be drilled and used to prevent waste and meet applicable well spacing requirements or location exceptions.

(3) The Executive Director shall approve the petition, provided:

(A) That the new well location meets established well spacing or is not closer than one-thousand three hundred twenty feet (1320') from lands owned by another if well spacing is not applicable; or

(B) That, if well spacing is not applicable, there is submitted a written statement from each surface

estate owner owning land closer than one-thousand three hundred twenty feet (1320') from the well requested to be authorized, stating that he or she has no objection to the new well location.

(4) If one of the above enumerated conditions cannot be met, the permittee must give notice as set forth in 785:30-3-4 regarding each additional proposed well. If a protest is received, the Board shall schedule a hearing and notify the applicant and protestant of such hearing. Even if no protest is received, the petitioner shall be given opportunity for hearing if the petition cannot be recommended for approval to the Board.

(b) **Replacement well.**

(1) For well locations authorized by a permit or prior right, a replacement well may be drilled on dedicated lands without prior approval from the Executive Director if the proposed replacement well will not be closer than meets established well spacing or will not be closer than one-thousand three hundred twenty feet (1320') from lands owned by another if well spacing is not applicable.

(2) For a well location authorized by permit or prior right where the proposed replacement well location is within one-thousand three hundred twenty feet (1,320') of lands owned by another, the replacement well may be drilled on lands relied on to establish the prior right or dedicated lands without prior approval of the Executive Director, provided the replacement well is within two-hundred fifty feet (250) of the well to be replaced.

(3) If paragraphs (1) or (2) of this subsection cannot be met, a petition for an additional well may be filed.

(c) **Location of wells identified.** A legal description or multi-purpose completion report such as that required by 785:35-5-3 showing the location of the well to the nearest ten (10) acre tract shall be submitted to the Board within sixty (60) days after completion of any additional or replacement well.

# Permanent Final Adoptions

## APPENDIX A. APPLICATION FOR A PERMIT TO USE GROUNDWATER [REVOKED]

<b>OFFICE USE ONLY</b>	
Application No.	_____
Type of Permit	_____
Groundwater Basin	_____
Equal Proportionate Share	_____

<b>APPLICATION FILING FEE</b>	
Amount of Water Requested	Fee
0 – 320 acre-feet.....	\$ _____
321 – 640 acre-feet.....	\$ _____
641 – 1500 acre-feet.....	\$ _____
Over 1500 acre-feet.....	\$ _____*

\*Plus \$ \_\_\_\_\_ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet. (Maximum Fee \$3,000.00)

**APPLICATION FOR PERMIT TO USE GROUNDWATER**  
**OKLAHOMA WATER RESOURCES BOARD**  
 PLANNING & MANAGEMENT DIVISION  
 3800 North Classen Blvd., Oklahoma City, OK 73118  
 Phone: (405) 530-8800 Fax: (405) 530-8900  
 Website: [www.owrb.ok.gov](http://www.owrb.ok.gov)

**1. NAME & ADDRESS** (Print the applicant's full name, as listed on the ownership documentation, and mailing address)

Applicant Name _____	Phone (____) _____ - _____
Address _____	Fax (____) _____ - _____
City _____	State _____ Zip _____
Contact Name (if applicable) _____	Phone (____) _____ - _____
Address _____	Fax (____) _____ - _____
City _____	State _____ Zip _____

**2. PURPOSE(S) FOR WHICH WATER WILL BE USED** (List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)

<u>AMOUNT</u>	<u>PURPOSE</u>
_____ acre-feet of water will be used for _____	
_____ acre-feet of water will be used for _____	

<b>OFFICE USE ONLY</b>	
SIC Codes	
_____	_____
_____	_____

**Irrigation Only:** \_\_\_\_\_ acres will be irrigated. Proposed Crops \_\_\_\_\_

**3. OWNERSHIP & LEGAL DESCRIPTION OF LAND DEDICATED** (List the legal description of all the lands to be dedicated. Please do not use city lot and block numbers or metes and bounds. Legal description must match the description on ownership documents. If additional space is needed, list on a separate sheet of paper.)

\_\_\_\_\_ acres owned; \_\_\_\_\_ acres leased; \_\_\_\_\_ acres platted (**municipal only**) and dedicated to the application.

_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N	<input type="radio"/> EIM
	<input type="radio"/> S Rng. _____	<input type="radio"/> WIM in _____
		<input type="radio"/> ECM County _____
_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N	<input type="radio"/> EIM
	<input type="radio"/> S Rng. _____	<input type="radio"/> WIM in _____
		<input type="radio"/> ECM County _____
_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N	<input type="radio"/> EIM
	<input type="radio"/> S Rng. _____	<input type="radio"/> WIM in _____
		<input type="radio"/> ECM County _____

Water will be used in \_\_\_\_\_ County, Oklahoma

4. **WELL INFORMATION** *(Please specify the number of wells requested and the legal description of either the 10-acre tract of land where the well will be located. If the 10-acre tract is not known, please describe the potential well area where wells may be drilled. If additional space is needed, list on a separate sheet of paper.)*

Water is to be withdrawn from \_\_\_\_\_ well(s) located in:

_____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N <input type="radio"/> S	Rge. _____	<input type="radio"/> EIM <input type="radio"/> WIM <input type="radio"/> ECM	in _____ County	Existing <input type="radio"/> Yes Well? <input type="radio"/> No
_____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N <input type="radio"/> S	Rge. _____	<input type="radio"/> EIM <input type="radio"/> WIM <input type="radio"/> ECM	in _____ County	Existing <input type="radio"/> Yes Well? <input type="radio"/> No
_____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____	<input type="radio"/> N <input type="radio"/> S	Rge. _____	<input type="radio"/> EIM <input type="radio"/> WIM <input type="radio"/> ECM	in _____ County	Existing <input type="radio"/> Yes Well? <input type="radio"/> No

**For wells that are existing:** Depth of Well(s) \_\_\_\_\_ feet; Pumping Rate(s) \_\_\_\_\_ gallons per minute

5. **MUNICIPALITIES AND RURAL WATER DISTRICTS ONLY**

**If platted lands within the municipal boundaries are dedicated:**

Will the municipality make water available to the platted lands area?  Yes  No  
 Will the well(s) be located not less than 600 feet within the boundaries of the municipal limits?  Yes  No  
 Will the well(s) be drilled on the platted lands dedicated?  Yes  No

6. **CITIZENSHIP AFFIDAVIT**

Are you a citizen of the United States of America?  Yes  No  
 If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States?  Yes  No. My A-number is \_\_\_\_\_ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

**(PLEASE NOTE: Each individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)**

7. **SIGNATURES**

Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapters 30 and 35 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh groundwater.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE ( IF APPLICABLE)

**NOTARY**  
 STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
 My commission expires: \_\_\_\_\_  
 (SEAL)

### 8. APPLICATION SUBMISSION AND PROCESSING

#### **The submitted application must include:**

- a. The appropriate filing fee;**
- b. The original application, typed or printed in ink, signed and notarized; and**
- c. Deed(s), lease(s), and / or letter (s) of consent as required.**
- d. Other documentation may be requested as needed to complete the application review.**

**Please note:** Any incomplete or unresponsive answers may cause a delay in the processing of your application.

In addition, Oklahoma Administrative Code (OAC) 785:30-1-4(d) states: "If the application is defective to as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and sixty (60) days shall be allowed for the refilling thereof. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application. Furthermore, OAC 785:30-3-3(b), states: "If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

Application # \_\_\_\_\_

**Oklahoma Water Resources Board Application Plat**

Applicant Name \_\_\_\_\_

*Note: Drawings must match the legal descriptions provided in questions #3 and #4 in the application and one copy of the plat must be filed with the application.*

NW NW NW	NE NW NW	NW NE NW	NE NE NW	NW NW NE	NE NW NE	NW NE NE	NE NE NE
SW NW NW	SE NW NW	SW NE NW	SE NE NW	SW NW NE	SE NW NE	SW NE NE	SE NE NE
NW SW NW	NE SW NW	NW SE NW	NE SE NW	NW SW NE	NE SW NE	NW SE NE	NE SE NE
SW SW NW	SE SW NW	SW SE NW	SE SE NW	SW SW NE	SE SW NE	SW SE NE	SE SE NE
NW NW SW	NE NW SW	NW NE SW	NE NE SW	NW NW SE	NE NW SE	NW NE SE	NE NE SE
SW NW SW	SE NW SW	SW NE SW	SE NE SW	SW NW SE	SE NW SE	SW NE SE	SE NE SE
NW SW SW	NE SW SW	NW SE SW	NE SE SW	NW SW SE	NE SW SE	NW SE SE	NE SE SE
SW SW SW	SE SW SW	SW SE SW	SE SE SW	SW SW SE	SE SW SE	SW SE SE	SE SE SE



Section – Township – Range

County



**Land Dedicated**



**Area of Use**



**Potential Well Location Area on Dedicated Lands**

● Proposed well locations  
(if known)

○ Other existing wells  
(not part of application)

(If exact proposed well location is not known)



# Permanent Final Adoptions

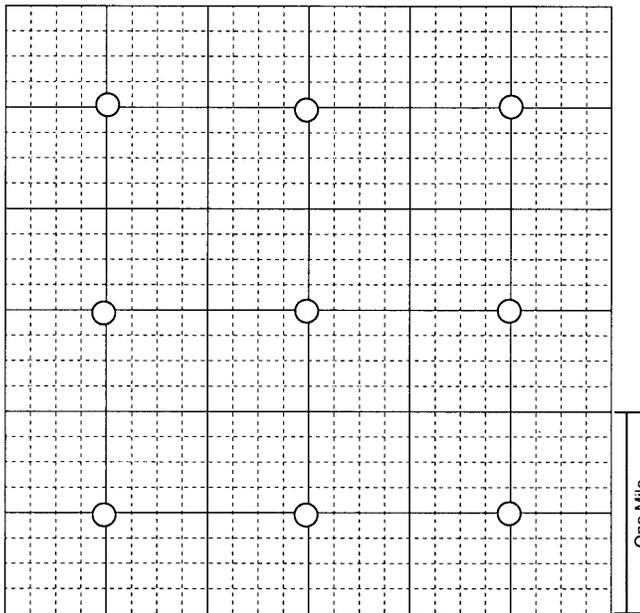
Application # \_\_\_\_\_

## Oklahoma Water Resources Board Surface Estate Owners Map

Applicant Name \_\_\_\_\_

The applicant must furnish names and mailing addresses of all surface estate owners of land located within one-thousand three hundred twenty (1320') from the actual location of existing or proposed wells and/or from the outside boundaries of all potential well location areas subject of this application, unless otherwise directed by the Board. Mark the actual location of existing and proposed wells and shade all potential well location areas subject of the application.

**One copy of this form must be filed with the Groundwater application.**



### Plat Scale



Each smaller square represents a ten (10) acre tract. (or 660 ft x 660 ft)

### SURFACE ESTATE OWNERS OF LANDS LOCATED WITHIN 1320 FEET OF WELL LOCATIONS OR AREAS

Name	Address
A. _____	_____
B. _____	_____
C. _____	_____
D. _____	_____
E. _____	_____
F. _____	_____
G. _____	_____
H. _____	_____
I. _____	_____

[OAR Docket #19-572; filed 6-7-19]

**TITLE 785. OKLAHOMA WATER  
RESOURCES BOARD  
CHAPTER 35. WELL DRILLER AND PUMP  
INSTALLER LICENSING**

[OAR Docket #19-573]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 785:35-1-2. Definitions [AMENDED]
- 785:35-1-5. Indemnity Fund [AMENDED]
- 785:35-1-6. Well Drillers and Pump installers Advisory Council [AMENDED]
- Subchapter 3. Licensing and Certifications
- 785:35-3-1. Licensing procedures [AMENDED]
- 785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
- Subchapter 7. Minimum Standards for Construction of Wells
- 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
- 785:35-7-1.1. Minimum standards for construction of heat exchange wells [AMENDED]
- 785:35-7-3. ~~Variations to minimum standards for construction of wells~~  
Minimum standards for construction of marginal water wells [AMENDED]
- 785:35-7-4. Variations to minimum standards for construction of wells [NEW]
- Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
- 785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes [AMENDED]

**AUTHORITY:**

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1085.4.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 6, 2018

**COMMENT PERIOD:**

December 3, 2018 through January 15, 2019

**PUBLIC HEARING:**

January 15, 2019

**ADOPTION:**

February 19, 2019

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 22, 2019

**LEGISLATIVE APPROVAL:**

Approved May 28, 2019 by HJR 1022

**FINAL ADOPTION:**

May 28, 2019

**EFFECTIVE:**

August 11, 2019

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Oklahoma Water Resources Board ("Board") amended Oklahoma Administrative Code ("OAC") 785:35-1-2 to add definitions of "cathodic protection" and "deep anode groundbed" to address confusion related to professional activities regulated by the Oklahoma Corporation Commission and which involve well drillers which are licensed by the Board. A definition was added for "marginal water" to clarify certain new activities authorized by recent statutory and regulatory amendments. Further definitions were added for "beneficial use," "groundwater," "soil boring," and "total dissolved solids" to clarify the meaning of terms which already appear in this chapter, but were defined elsewhere.

The Board amended OAC 785:35-1-5 to reduce the maximum amount of expenditures per well from fifteen thousand dollars to ten thousand dollars. This amendment is for the purpose of conforming the rules to recent legislative enactments.

The Board amended OAC 785:35-1-6 to change the terms for members of the advisory council to two years and directing that vacancies on the council be filled within sixty days. The proposed amendment is intended to give all members of the council the same term length.

The Board amended OAC 785:35-3-1 and 785:35-3-2 to add a new license category for marginal water well construction and continuing education requirements for the new category. The proposed amendments are for the purpose of administering new professional activities authorized by recent legislative enactments.

The Board amended OAC 785:35-7-1 to prohibit constructing fresh groundwater wells in marginal-quality water zones. This amendment is intended to protect against the contamination of fresh groundwater by comingling with marginal groundwater. Another proposed amendment to the same rule reduces the minimum amount of chlorine to be used in drilling fluids to a level recommended by industry experts. The reduced minimum chlorine concentration is intended to preserve the function of polymers commonly found in drilling fluids.

The Board amended OAC 785:35-7-1.1 to modify construction standards for heat exchange wells by changes which include references to new industry standards and material specifications. It is further amended OAC 785:35-11-1 to add a provision identifying and referencing industry standards for the plugging of vertical closed loop heat exchange wells. The amendments are intended update the Board's rules to reflect current industry practices and available construction materials.

The Board added a new section OAC 785:35-7-3 which provides minimum construction standards for marginal water wells. The new section is necessary to administer professional activities authorized by recent legislative enactments. The section previously numbered 785:35-7-3 is proposed to be renumbered to 785:35-7-4.

**CONTACT PERSON:**

Sara Gibson, General Counsel, Oklahoma Water Resources Board, 3800 North Classen Blvd, Oklahoma City, OK 73228, (405) 530-8800, sara.gibson@owrb.ok.gov

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**785:35-1-2. Definitions**

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

"**Abandoned well**" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"**Application**" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"**Board**" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

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**"Cathodic protection"** means a technique used to reduce the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

**"Commercial drilling"** means drilling and installation as a business, trade, or occupation for compensation. [82:1010.1]

**"Commercial installation"** means installation as a business, trade or occupation for compensation. [82:1020.1]

**"Commercial plugging"** means plugging wells or borings as a business, trade or occupation for compensation. [82:1020.1]

**"Deep anode groundbed"** means one or more anodes installed vertically at a depth of fifty (50) feet or more below the earth's surface in a drilled hole for the purpose of providing cathodic protection.

**"Direct push geological boring"** means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

**"Direct push monitoring well"** means a well installed by direct push technology and used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

**"Drilling water"** means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

**"Domestic use"** means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

**"Firm"** means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

**"Fresh water"** means water which has less than five thousand (5000) parts per million total dissolved solids. All other water is salt water. [82:1020.1(7)]

**"Fresh water observation well"** means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

**"Geotechnical boring"** means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological

formation samples or information, or for the determination of groundwater quality or remediation.

**"Geothermal well"** means heat pump well.

**"Groundwater"** means fresh water and marginal water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82:1020.1(1)]

**"Groundwater well"** means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

**"Heat exchange well"** means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

**"Heat pump well"** means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

**"Heat sink well"** means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

**"License"** means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

**"Marginal water"** means water which has at least five thousand (5000) and less than ten thousand (10,000) parts per million total dissolved solids.

**"Monitoring well"** means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

**"Open-loop heat pump water supply well"** means a well drilled to supply water for the purpose of heat transfer.

**"Operator"** means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

**"Piezometer"** means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

**"Pump"** means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, pipes from wells to pressure tanks, pressure switches, shut off valves for pressure tanks, related equipment and controls.

**"Pump installer"** means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"**Sand point well**" means a groundwater well with a bore-hole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"**Site assessment observation well**" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"**Sleeve**" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit and is separate from surface casing and conductor pipe.

"**Soil boring**" means geotechnical boring.

"**Total dissolved solids**" (TDS) means a measure, in parts per million, of dissolved combined organic or inorganic substances suspended in water. Total dissolved solids is used as an aggregate indicator of water quality.

"**Unsaturated zone monitoring well**" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"**Vertical closed-loop heat pump well**" means the bore-hole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"**Water return well**" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"**Water well test hole**" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"**Well**" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"**Well driller**" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the test drilling of wells in the State of Oklahoma.

**785:35-1-5. Indemnity Fund**

(a) **Purpose of the Indemnity Fund.** *Monies in the Indemnity Fund shall only be expended for remedial actions necessary without notice and hearing to protect groundwater from pollution or potential pollution from wells or boreholes that do not meet the minimum standards for construction or that have been abandoned.* [82:1020.16(B)(2)] *Expenditures from the indemnity fund...shall not exceed ~~Fifteen~~Ten Thousand Dollars (~~\$15,000.00~~) (\$10,000.00) for each well, borehole, or pump for which action is taken.* [82:1020.16(B)(4)] Monies from the Indemnity Fund shall be expended solely for the repair or plugging of improperly constructed wells. Unless otherwise determined by the Board, a finding that a well has

been improperly constructed shall be based on the rules and statutes in place at the time the well was constructed.

(b) **Reimbursement.** The establishment of the Indemnity Fund in no way relieves the driller or pump installer from liability incurred or responsibility for wells or boreholes drilled or plugged or pumps installed which are not in compliance with the Board's rules and regulations. If the Board makes an expenditure from the Indemnity Fund to remedy a deficient condition, then any driller or pump installer responsible therefor shall, within a reasonable time specified in a written notification by the Board, reimburse the Indemnity Fund for the full amount of the expenditure. If the driller or pump installer does not make such reimbursement, then the Board shall not renew the license or certification of the driller or pump installer and may pursue other available remedies. *The Board shall seek reimbursement as recommended by the Well Drillers and Pump Installers Advisory Council for any remedial action taken or required by the Board.* Any monies received as reimbursement shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in 785:35-1-5(c). [82:1020.16(B)(5)]

(c) **Well Drillers and Pump Installers Regulation Account.** When the Well Drillers and Pump Installers Remedial Action Indemnity Fund reaches Fifty Thousand Dollars (\$50,000.00), the annual fees received from well drillers and pump installers, *monies received as reimbursement, and administrative penalties recovered under 785:35-1-4(b) [82:1020.16(C)]* shall be deposited in a separate account in the *Water Resources Board Revolving Fund designated as the Well Drillers and Pump Installers Regulation Account.* *Monies in said account shall be used by the Board for inspections, licensing, enforcement, and education, reimbursing per diem and travel costs for members of the Well Drillers and Pump Installers Advisory Council pursuant to the State Travel Reimbursement Act, and as otherwise determined to be necessary to implement the provisions of this section [82:1020.16(C)],* including but not limited to the payment for damage or destruction of property caused by activities related to inspections and enforcement by the Board.

**785:35-1-6. Well Drillers and Pump installers Advisory Council**

(a) **Creation of Council.** The Well Drillers and Pump Installers Advisory Council is hereby created. The Council shall consist of eight (8) members appointed by and serving at the pleasure of the Oklahoma Water Resources Board. The Board shall seek nominations from each of the Congressional districts and the remaining members shall be appointed at large. The Executive Director of the Board shall be a member ex officio. At least one member shall represent each licensed activity. ~~Three members shall be appointed for a term of one (1) year; three members shall be appointed for a term of two (2) years; and two members shall be appointed for a term of three (3) years.~~ Upon the expiration of said terms, their successors shall be appointed for terms of three (3) years. The term for a member on the advisory council shall be two (2) years. Upon the expiration of said terms, their successors shall be appointed for terms of two (2) years. Any vacancy occurring

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on the Council shall be filled within 60 days of such vacancy. Council members may be removed by the Board without cause.

(b) **Qualifications for Council membership.** Each Council member shall have been licensed as a well driller or pump installer by the Board for at least five (5) years prior to appointment to the Council, and must be in good standing with the Board at the time of appointment and during the term of Council membership.

(c) **Organization of Council.** The Council shall meet at least once each twelve months and otherwise at the call of the Board or Executive Director of the Board. The Executive Director or his or her designee shall chair the first Council meeting, at which the Council members may elect a chair for a term of one year from among their membership. In the event of a vacancy on the Council, the remaining Council members may make nominations or recommendations, subject to approval and appointment by the Board. The Executive Director or his or her designee will consult with an elected chair concerning meeting agendas.

(d) **Duties of the Council.** The Council shall have the following duties:

(1) Recommend new rules and rules amendments to the Board, provided such recommendations must be in writing and must be concurred in by a majority of the membership of the Council;

(2) Review and recommend approval or denial of use of monies in the Well Drillers and Pump Installers Remedial Action Indemnity Fund for:

(A) Remedial actions to protect groundwater from pollution or potential pollution from wells or boreholes under the jurisdiction of the Board which do not meet minimum standards for construction or that have been abandoned, and

(B) Inspections, licensing, enforcement and education by the Board; and

(3) Recommend seeking reimbursement for any remedial action taken or required by the Board.

(e) **Effect of rule.** Nothing in this section shall be construed to limit or restrict the Board's authority regarding water well and pump installer licensing or use of the Well Drillers and Pump Installers Remedial Action Indemnity Fund.

## SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

### 785:35-3-1. Licensing procedures

(a) **Who must file and types of certifications.**

(1) All persons engaged in the following categories of activities in this state shall make application for and obtain a license from the Board:

(A) Category 1: commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells;

(B) Category 2: commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings;

(C) Category 3: commercial installation of water well pumps;

(D) Category 4: commercial drilling or plugging of wells utilized for heat exchange purposes including but not limited to the following:

(i) heat exchange wells; and

(ii) geothermal wells.

(E) Category 5: commercial drilling or plugging of marginal water wells.

(2) The license issued by the Board shall indicate on its face each category and specific activity or activities as described in (a)(1) of this section for which the licensee is certified to perform and conduct.

(3) Each licensed firm shall have at least one operator who may also be the licensee. Each operator shall be required to obtain a certification from the Board. An operator shall not conduct types of activities not authorized for the licensee under whom the operator works.

(4) To engage in activities for which certification is required, operators shall also have a valid license or shall be certified as an operator for a person having a valid license. An operator's certification by itself shall not constitute proper authority to engage in activities for which licensing is required.

(5) Reconditioning of wells as a trade, business or occupation for compensation shall be considered commercial drilling.

(6) No license shall be required for any person who installs vapor observation wells within the excavation of newly installed underground tank systems, provided that the bottom of the vapor observation well does not intercept the groundwater table and is above the historic high water table level in the area, and provided further that such vapor wells shall be constructed to meet or exceed the minimum standards for the construction of monitoring wells which are located in the unsaturated zone of aquifer.

(b) **Application requirements for license.**

(1) Any person who intends to conduct any of the activities listed in 785:35-3-1(a)(1) must complete and file a verified application for license and activity certification on forms provided by the Board.

(2) The license applicant shall submit the following with the application:

(A) verification of at least two (2) years qualified experience in the activity or activities for which certification under the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required qualified experience;

(B) a list of all well rigs and equipment used or to be used in conducting the activities for which certification under license is sought;

(C) the license fee for each activity for which certification under the license is sought;

(D) the indemnity fund fee for each category of activity for which certification under the license is sought;

(E) the examination fee.

- (F) applicants for category 5 must also hold a category 1 certification for a minimum of 2 years.
- (3) Applicants who are partnerships, corporations or other entities that are not individuals shall additionally provide the following with the application:
- (A) designation of one contact person who shall be an official properly authorized to act for the partnership, corporation or other entity;
  - (B) authorized signature of the contact person who shall execute and verify the application;
  - (C) a list of all persons employed who intend to become duly certified operators for the partnership, corporation or other entity.
- (c) **Application requirements for operator certification.**
- (1) Any individual who intends to conduct any of the activities listed in 785:35-3-1(a)(1) for any person who obtains a license pursuant to these rules must complete and file an application for an operator certification on forms supplied by the Board, provided however, one operator certification shall be issued with the license to the licensee.
- (2) The applicant for an operator certification shall submit the following with the application:
- (A) verification of at least one (1) year of qualified experience in the activity or activities for which the operator certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required qualified experience;
  - (B) the operator certification fee;
  - (C) the examination fee.
- (d) **Completion of application and notification.**
- (1) Any application for license or operator certification not completed within six (6) months from the date of receipt shall be cancelled and fees submitted therewith forfeited.
- (2) Upon receipt of a properly completed application and all items required to be submitted, the Board shall inform said applicant of the dates, times, and places of the examination for which he is eligible.
- (e) **Administration and procedures relating to examination.**
- (1) Upon notification of the dates, times, and places of examinations, the applicant shall notify the Board of the date, time, and place the applicant will be present to take the examination relating to the activities listed in 785:35-3-1(a)(1) for which the license or operator certification is sought. There shall be ~~four~~five (4~~5~~) kinds of examinations:
- (A) an examination relating to groundwater wells and fresh water observation wells,
  - (B) an examination relating to monitoring wells, site assessment observation wells, and geotechnical boring,
  - (C) an examination relating to pump installation activities, including but not limited to related electrical work performed from the output side of a fused disconnect or breaker box, and
  - (D) an examination relating to heat exchange wells.
- (E) an examination relating to marginal water wells.
- (2) The applicant shall not be allowed to confer with any other person or refer to outside materials for answers to examination questions.
- (3) After completion of the appropriate examination(s) within a reasonable time, the Board shall grade the examinations and pass upon qualifications of applicants for licensing and certification.
- (4) An applicant, at any time within 30 days of the date he is notified of the results of an examination, may inspect his or her examination paper in the offices of the Board during the normal business hours for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.
- (5) Any applicant who fails an examination will be promptly notified by the Board. After a minimum time period of thirty (30) days, and if a subsequent examination is scheduled between the date of notification and the six (6) months expiration period of the application, the applicant may request to take the subsequent examination but must pay the appropriate examination fee each time the applicant requests to take the examination.
- (f) **Issuance of license.**
- (1) Upon acceptance of the applicant's qualifications the Board will issue the license with appropriate category and activity certifications to the applicant along with the required operator certifications.
- (2) No license and no operator certificate shall be issued to any person who has not been a resident of the State of Oklahoma for at least ninety (90) days prior to the date of issuance of the license, unless the reciprocity provisions for nonresidents as set forth in (B) of this paragraph apply.
- (A) The applicant for a license or operator certificate as the case may be, shall submit written verification of Oklahoma residency as required in this subsection.
  - (B) The Board may waive the ninety (90) day residency requirement as outlined in this subsection for any nonresident of the State of Oklahoma if the nonresident's particular state, territory, or possession of the United States extends similar privileges to the persons licensed under the provisions herein. If the applicant's state of residency has a licensing requirement, then the nonresident must be licensed and in good standing in that state. The license fees charged to a nonresident applicant shall be at least equal to the fees charged for similar nonresident license by the state, territory, or possession of the United States in which the applicant is a resident, but in no case shall the fee be less than four hundred dollars (\$400.00).
- (g) **Changing the designation of license or moving an operator certification.**
- (1) Any individual licensee may request modification of the license designation to that of a partnership, corporation or other legal entity. The Board shall approve the request and issue a modified license after the following conditions are met:

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- (A) the licensee holds an active valid license;
  - (B) the licensee gives written notice of the request to the Board;
  - (C) the licensee provides the name of the contact person who is an official properly authorized to act for the partnership, corporation or other entity;
  - (D) a list of all persons employed by the partnership, corporation or other entity who are or intend to become duly certified operators.
  - (E) payment of fee(s) required for change of license and any new operator certifications.
- (2) An operator who has obtained a certification to drill under the license of a partnership, firm, or corporation can transfer that certification to another partnership, firm, or corporation on the following conditions provided that an operator cannot conduct activities during any period that he is not associated with a licensee, and provided further that an operator certification will not be renewed unless the operator is associated with a licensee:
- (A) the transfer fee is submitted to the Board with the transfer request, and
  - (B) the operator associates with the new licensee within thirty (30) days, or has provided notice to the Board of his current address within thirty (30) days after leaving the previous licensee.
- (h) **Adding activities to be certified under license or operator certification.**
- (1) A licensee or certified operator may request to add activities to be certified under the license or operator certification.
  - (2) The Board shall consider approval of request after the following conditions are met:
    - (A) verification of at least two (2) years qualified experience in the additional activity or activities for which the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required experience; verification of at least one (1) year qualified experience in the additional activity or activities for which certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required experience;
    - (B) submittal of an update of the list of rigs or other equipment to be used in the additional activity or activities;
    - (C) submittal of the additional license or operator certification fee;
    - (D) submittal of the additional indemnity fund fee;
    - (E) submittal of the examination fee;
    - (F) passing the examination.

### 785:35-3-2. Expiration and renewal of licenses and certifications

- (a) **Expiration.** All licenses and operator certifications issued by the Board shall expire on June 30 of the first or second year following issuance of the license or operators certification. New licenses or operator certifications shall be issued for

a one or two year period, so that all odd license numbers and associated operators certifications shall expire in odd numbered years and all even numbered licenses and associated operator certifications shall expire in even numbered years.

(b) **Renewal.** All licenses and certifications may be renewed for a period of two years, subject to the rules in this Chapter. On or before May 31 of the year the license or certification is to be renewed, except as specified in this subsection, each licensee and certified operator shall submit the following:

- (1) A completed application for renewal on forms furnished by the Board with the affidavit executed by the listed contact person for the licensee, and
- (2) The license or operator certification renewal fee as provided for in these rules, provided that renewal fees shall not be due for licenses and certifications issued after January 1 of the year in which the first renewal is due, and
- (3) The indemnity fund fee for those activities for which the license or operator certification is valid, and
- (4) The late fee if the renewal application is submitted after May 31.

(c) **Grace period.** Any licensee or operator who allows his or her license or certification to lapse will be given until June 30 of the year in which they are scheduled to renew their license or operator certification in which to renew his or her license or certification without an examination; provided however, a late fee shall be due after May 31 as set forth in 785:5-1-11. After the grace period, the application will be treated as a new application. Provided however, any licensee or operator fulfilling a military obligation shall be granted an indefinite grace period as determined by the Board.

(d) **Board action.** The Board may grant the renewal application or deny the application as provided in this subchapter of these rules.

(e) **Continuing education requirement.**

(1) Beginning July 1, 2004, completing annual continuing education shall be required before any license or operator certification will be renewed, unless otherwise specifically determined by the Board or as set forth in paragraph (8) of this subsection. Information concerning the continuing education attended must be submitted with the application for renewal form.

(2) All licensees and all certified operators shall be required to attend at least four (4) units of approved continuing education during each year period (from July 1 through June 30) or a total of eight (8) units for each two-year period of renewal of which one unit must be comprised of an approved Oklahoma Rules and Regulations unit.

(3) Category 5 licensees shall be required to obtain at least two (2) units, of the required eight (8) units, of specialized continuing education related to the marginal water wells for each two-year period.

~~(34)~~ Continuing education shall be required during the first full year that the license or operator certification is active and during each year the license or operator certification is renewed.

~~(45)~~ One unit of continuing education shall equal fifty (50) minutes of approved instruction.

(56) Approved trade shows and exhibitions attended shall be counted as one unit.

(67) Continuing education instruction relating to well drilling and plugging and pump installation which are provided by or approved by another state's well drilling program are pre-approved for the Oklahoma continuing education requirement if the other state's well drilling program offers reciprocity by accepting Oklahoma's pre-approved continuing education instruction.

(78) Other continuing education instruction and trade shows and exhibitions will be considered for approval by the Board after information concerning the continuing education or trade show and exhibition is submitted to the Board for review. Pre-approval of continuing education, trade shows and exhibitions may be requested for any licensee or certified operator.

(82) Online continuing education that has been designated as pre-approved by the Board shall be accepted for no more than four (4) units of the required eight (8) units for the two-year renewal period.

(910) If a licensee or certified operator fails to attend four (4) or eight (8) units as the case may be during the renewal period, the application for renewal may be approved after payment of \$250.00 in penalty and double the continuing education requirements eight (8) or sixteen (16) units as the case may be).

**SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS**

**785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes**

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person. More stringent construction standards may be required for areas of known contamination as identified in Chapter 45, Appendix H.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(4) **Minor and small public water supply wells.** Prior to drilling a well that will be used in a minor or small public water supply system, a permit from the Oklahoma Department of Environmental Quality (ODEQ) must be obtained. Minor and small public water supply systems are defined in OAC 252:624-1-2 of the ODEQ regulations.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line, 25 feet from aerobic (above ground) sprinkler spray, and 50 feet from an aerobic sprinkler head,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon, and not a subsurface septic system,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

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- (3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.
- (c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:
- (1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt or marginal water zone.
- (2) New groundwater and fresh water observation wells shall have:
- (A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.
- (B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.
- (C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.
- (D) Casing that extends at least twelve (12) inches above the natural ground level or at least eight (8) inches above the floor surface (for a total of 12 inches above natural ground level) for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.
- (E) Casing meeting or exceeding the following:
- (i) new or clean and sanitary used carbon or stainless steel, or
- (ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or
- (iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.
- (d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.
- (1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:
- (A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and
- (B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch (1½") thick.
- (C) If the surface casing does not extend twelve inches (12") above natural ground level and a pitless cap or sanitary seal is not installed, then a ten foot (10') cement grout/bentonite surface seal shall be installed in the area between the surface and production casings terminating within four feet (4') of land surface.
- (D) When deemed necessary to utilize conductor or surface casing to control flowing material near surface, an additional cement/bentonite seal shall originate ten feet (10') below the base of the conductor/surface casing and shall terminate ten feet (10') above the base of the conductor/surface casing between the conductor/surface casing and production casing.
- (2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface for a minimum total length of ten feet (10') after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.
- (3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.
- (4) A maximum of twenty percent (20%) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of draw-down tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than ~~100 parts per million~~ 0.5 milligrams per liter (mg/L) chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and,

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

**785:35-7-1.1. Minimum standards for construction of heat exchange wells**

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all heat exchange wells as defined in 785:35-1-2, whether constructed by a person having a valid license or by any other person. Minimum standards shall include regulation of the drilling of the borehole, installation of casing, installation of heat loop pipe, ~~and the filling and/or grouting of the well, and installation of the heat loop pipe up to the connection of the heat loop pipe to the facility circulation equipment.~~ Manifolding of loop pipe to complete a heat exchange system is not regulated under this Section.

(2) **Prohibition against other uses.** Heat exchange wells ~~cannot~~ shall not be used for any purpose other than heat exchange. After completion, heat exchange wells shall not be converted to any other type of well ~~except by~~ unless written approval by is obtained from the Board. The licensee shall ensure that the heat exchange well is constructed according to the rules.

(3) **Maximum protection of groundwater required.** Construction of ~~geothermal and~~ heat exchange wells shall provide maximum protection to the groundwater from ~~contamination~~ surface contaminants and movement and migration of water from one zone or aquifer to another.

(b) **Location of heat exchange wells.**

(1) A vertical heat ~~pump~~ exchange well shall be located on a site so that surface water will not pool or pond around or within ten (10) feet of the heat exchange well location.

(2) Placement of a heat exchange well must meet or exceed standards as set forth by section 785:35-7-1(b) relating to location requirements for groundwater wells except as set forth in paragraph 3 of this subsection.

(3) If not prohibited by the owner of the well or other federal or state agency requirements, heat exchange wells may be located closer to a possible source of pollution than the minimum distances specified in Section 785:35-7-1(b) if all of the following conditions are met:

(A) The possible pollution source is not a wastewater lagoon, ~~septic tank, absorption field, or aerobic~~ sprinkler system.

(B) The well annulus is completely sealed as described in paragraph 7 of subsection (c) of this section.

(c) **Construction standards for vertical closed-loop exchange wells.** Vertical closed-loop heat exchange wells shall be constructed in accordance with this subsection. Site specific conditions shall be assessed to determine the best method and materials to be used for ~~sealing and filling~~ grouting the well annulus to ~~protect~~ provide protection of the groundwater per paragraph 3 of subsection (a). In addition, but not as an alternative, to the requirements stated in (1) through ~~(9)~~ (8) of this subsection, methods and materials for construction of heat exchange wells that meet or exceed recommendations specified in "Grouting for Vertical Geothermal Heat Pump Systems Engineering Design and Field Procedures Manual", International Ground Source Heat Pump Association, Oklahoma State University, ~~First Ed. 2000~~ 2015, and in "Grouting

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Procedures for Ground Source Heat Pump Systems", International Ground Source Heat Pump Association, Oklahoma State University, 1994"ANSI/CSA/IGSHPA C448 Series-16, Design and installation of ground source heat pump systems for commercial and residential buildings", American National Standards Institute, 2016, may be used for construction of vertical closed-loop heat exchange wells.

(1) **Casing material.** If permanent casing is needed in a vertical closed-loop heat exchange well, it must meet standards set out in Section 785:35-7-1 for steel and for plastic.

(2) **Heat exchange loop material.** ~~In a closed loop heat exchange well, the material used to make up the heat exchange loop that is placed into the ground must be equal to or exceed PE3408, DR 11, 160 PSI high density polyethylene (HDPE) or ASTM D 3350.~~The material used to construct the heat exchange loop must meet or exceed standards set forth by Clause 5.4 of ANSI/CSA/IGSHPA C448.0.

(3) **Connecting closed-loop pipe.** All pipe joints and fittings installed and buried shall be ~~socket, butt or thermally fused according to the pipe manufacturer's specifications~~meet or exceed standards set forth by Clause 5.4 of ANSI/CSA/IGSHPA C448.0. Glued or clamped joints shall not be used below ground unless the joint or connection serves as a service outlet and the joint or connection is not covered with earth material. Joints must not leak after assembly. All indoor piping and fittings should meet or exceed standards set forth by Clause 5.5 of ANSI/CSA/IGSHPA C448.0.

(4) **Heat transfer fluid.** ~~The fluid used inside the closed loop assembly must be non-toxic, food grade quality and approved for use by the U.S. Environmental Protection Agency and~~Approved fluids for use inside the heat exchange loop include potable water, food-grade or USP-grade propylene glycol, and solutions in which remediation of leaks would occur through dissipation. ~~A~~A release of the fluid to the groundwater must not violate Oklahoma Water Quality Standards set forth in Chapter 45, OAC 785.

(5) **Borehole size.** ~~The hole size for heat exchange wells must be of sufficient size to allow placement of the material to surround all pipe, but in no case shall the borehole diameter be less than four (4) inches.~~**Borehole specifications.**

(A) **Borehole diameter.** The borehole for vertical closed-loop heat exchange wells must have a sufficient diameter to accommodate the heat exchange loop u-bend assembly, tremie pipe, and placement of grout to surround all heat exchange loop pipe.

(B) **Exploratory borehole.** The first borehole drilled for the vertical closed-loop heat exchange system shall be considered an exploratory borehole. A subsequent borehole may also be considered an exploratory borehole if the well driller encounters subsurface conditions that include, but are not limited to, lost circulation conditions, hydrocarbons or hazardous gases, and changes in groundwater chemistry.

(C) **Lost circulation conditions.** If caves or large fractures are encountered in drilling the exploratory borehole or any subsequent borehole, grouting may not be possible and the Board must pre-approve completion of the vertical closed-loop heat exchange system in such conditions based on plans to bridge and seal zones of lost circulation.

(D) **Hydrocarbons and hazardous gases.** If hazardous gases or hydrocarbons are observed in drilling the exploratory borehole or any subsequent borehole, the Board must be notified immediately. Completion of the vertical closed-loop heat exchange system shall be prohibited without Board approval.

(E) **Groundwater chemistry.** Chemistry of groundwater encountered in drilling the exploratory borehole, or any subsequent borehole shall be used to inform grout selection. Instructions provided by the grout manufacturer must be followed to provide protection of the groundwater per paragraph 3 of subsection (c) of this section. The grout manufacturer shall be consulted as required.

(6) **Grouting of vertical heat exchange wells.** Grouting and filling the annulus of a heat exchange well must be completed immediately after the well is drilled to avoid cave-in of the uncased hole.

(7) **Vertical heat exchange well sealing and filling materials and methods.** ~~The well annulus must be completely sealed or filled the total length of the borehole with approved materials and methods as listed below.~~**Grouting methods and materials for vertical closed-loop heat exchange wells.** Grouting methods for vertical closed-loop heat exchange wells shall meet or exceed standards provided by Clause 5.8 of ANSI/CSA/IGSHPA C448.0 and Clause 6.3 of ANSI/CSA/IGSHPA C448.3 except where standards set forth by this Section provide exceptions. The following methods and materials are approved for grouting the annulus of vertical closed-loop heat exchange wells, provided that standards set forth by 785:35-7-1.1(c)(5)(E) shall also apply:

(A) A bentonite, cementitious, or Portland cement grout seal shall be installed from a point thirty (30) feet below land surface up to the excavation trench that connects the closed loop to the heat exchange system. Spreading or expanding clips shall not be used within the top thirty (30) feet of the borehole. A grout seal shall be installed from the total depth of the borehole up to the connecting trench and must be composed of one of the following materials:

(i) Portland cement;

(ii) Sand-cement mixed at a ratio of not more than 188 pounds of sand to one 94-pound sack of Portland cement and seven (7) gallons of water;

(iii) High solids bentonite grout with a minimum solids content of 20 percent by weight. Clean silica sand may be added to the slurry;

(iv) Bentonite pellets or chips; or

(v) Approved thermally enhanced grouts and non-cement grouts which meet standards set forth

by Clause 5.8 of ANSI/CSA/IGSHPA C448.0 and Clause 6.3 of ANSI/CSA/IGSHPA C448.3

~~(B) Approved annulus sealing and filling materials below thirty (30) feet shall include Portland cement, high solids bentonite grout (20-30% solids by weight), bentonite pellets or chips, water well filter pack sand or gravel, or approved high efficiency or thermally enhanced grouts designed for geothermal borehole.~~

~~(C) The annulus sealing or fill material shall be installed from the bottom of the borehole to a termination point of no less than thirty (30) feet from land surface.~~

~~(D) Bentonite chip or pellet fill material installed shall be hydrated immediately after installation if installed in the unsaturated zone.~~

~~(E) Fill material placed in the annulus shall be uncontaminated, provided that cuttings shall not be used as fill material.~~

~~(F) When non-slurry sealing and filling materials are used, only clean water well filter pack sand or gravel or chipped or pelletized sodium bentonite varieties that are designed to fall through standing water are acceptable when sealing the annulus of a well that is below the water level in the saturated zone. The borehole shall be flushed clean of all drilling mud and debris left over from the drilling operation so that the bentonite products designed for this type of installation will gravity feed without obstruction. Material shall be introduced in a manner to prevent bridging of the materials in the borehole annulus. A measuring device such as a tagline shall be used to measure and document placement of the materials installed.~~

~~(G) Slurry mixes of bentonite grout or Portland cement shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout or Portland cement. The tremie pipe will extend the full depth of the borehole before pumping begins. The borehole diameter shall be of adequate size to allow proper placement of materials using this method. Slurry volume used must equal the annulus volume of the borehole.~~

~~(H) For air drilled boreholes in which the borehole is completely dry and the normal static water level is deeper than the total depth of the heat exchange well, the bentonite slurry may be pumped from the surface without a tremie pipe.~~

~~(8) **Multiple formations, lost circulation zones, or zones of differing water quality.** When multiple formations, lost circulation zones, or zones of differing water quality are encountered within the same borehole, the listed sealing and filling materials set forth in paragraph (7) may be used, provided, that if sand or gravel material is used as the fill material, a solid plug of Portland grout, bentonite pellets, or bentonite chips must be installed to separate the formations or zones to prevent cross~~

~~contamination. The total length of the plug must be a minimum of five (5) feet and installed in a consolidated area of the borehole. If no consolidated area or formation is present to install the plug (such as loose sand or gravel), sand and/or gravel shall not be acceptable annulus fill material.~~ **Concentric tube heat exchangers.** Concentric tube heat exchangers that meet or exceed the requirements of this Section are approved.

~~(9) **Wells drilled in lost circulation conditions.** If caves or large fractures are encountered in drilling the borehole, grouting may not be possible and the Board must pre approve completion of the heat pump well in such conditions based on plans to bridge and seal such areas. If completion is not approved, the well must be properly plugged. Chipped bentonite or clean fill (gravel, sand and other appropriate material) may be used to seal small fractures.~~

**(d) Construction standards for open-loop and return heat exchange wells.**

~~(1) **Open loop heat exchange wells** Groundwater wells and water return wells used in open-loop heat exchange must meet the minimum construction standards set forth in Section 785:35-7-1 relating to groundwater.~~

~~(2) **Water return wells for domestic heat exchange systems** must meet the minimum construction requirements set forth in Section 785:35-7-1, and the groundwater used in the system must be returned to the same aquifer from which the groundwater was withdrawn by the open loop heat exchange well, provided that authorization from the Oklahoma Department of Environmental Quality may also be required. Groundwater used in the open loop heat exchange system must remain untreated and be returned to the same aquifer from which the groundwater was withdrawn.~~

**(e) Construction standards for horizontal closed-loop heat exchange systems.** Horizontal closed-loop heat exchange systems constructed by trenching or digging are exempt from grouting requirements, provided that no part of the horizontal loop is constructed at or below the highest anticipated groundwater level. Horizontal closed-loop heat exchange systems constructed by boring or drilling must be grouted according to standards set forth by paragraph 7 of subsection (c) of this Section. All other construction for horizontal closed-loop heat exchange systems shall meet or exceed standards set forth by subsection (c) of this Section.

**785:35-7-3. Variances to minimum standards for construction of wells Minimum standards for construction of marginal water wells**

~~(a) Variancees from any of the minimum standards for construction of wells set forth in this subchapter may be granted by the Board when it is demonstrated that the construction proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variancees must be completed on forms provided by the Board and submitted prior to beginning any work related to the variance, unless otherwise approved by the Executive Director of the Board as provided in this section.~~

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(b) ~~Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.~~

(c) ~~Requests for variances must be signed by the licensed well driller, contain a signature from the landowner of the land where the work is being done, and contain a certification signed by a licensed professional engineer that activities allowed by such variance will not cause pollution; provided however, a certification from a licensed professional engineer shall not be mandatory for a variance request to water well construction minimum standards unless otherwise required by the Executive Director.~~

(d) ~~Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the ground-water and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.~~

(e) ~~The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.~~

(a) **General requirements.**

(1) **Intent to drill application and fee required.**

(A) The well driller who shall desire to drill marginal water well shall submit an intent to drill application prior to construction upon printed forms which will be furnished by the Board. Marginal water wells shall not be constructed for domestic use unless a variance is granted by the Board.

(B) The well driller shall provide information on the well design and materials to be used in the well construction, including the cementing and testing procedures, and any other pertinent data required by the Board.

(C) All supporting documentations along with the required fee as provided in 785:5-1-11 shall form a part of the intent to drill application.

(D) The intent to drill application shall be signed by the well driller conducting the well drilling activities.

(E) A marginal water well construction permit must be approved by the Board before the drilling of any marginal water well.

(F) Drilling of marginal water well shall be conducted in accordance with the marginal water well construction permit as approved and conditioned by the Board.

(G) While conducting well drilling activities the well driller shall have a copy of the approved construction permit on site and available for inspection upon request.

(2) **Marginal water well construction without permit.**

(A) The licensed marginal water well driller who encounters marginal water shall cease the operation, temporarily cap the well, and must take necessary measures to prevent comingling of the marginal water with fresh water.

(B) The well driller shall submit an intent to drill application to the Board as provided in subsection 1.

(C) The Board may revoke, suspend, or deny the renewal of the license or certification to any well driller who fails to comply with the rules and regulations.

(b) **Minimum standards.**

(1) **Longevity of casing.** The well driller must provide information that supports the longevity of the selected casing in response to potentially corrosive salt concentrations.

(2) **Annular seals to prevent the contamination of fresh water.** The annular space between the casing and borehole shall be sealed to prevent the comingling of fresh water with marginal water by using enough cement under pressure to completely fill and seal the annular space between the casing and borehole. Unless an alternate casing and/or cementing procedure is authorized by the Board, the well casing shall be cemented in this manner from 50 feet below the deepest fresh groundwater zone or aquifer encountered while drilling to land surface or immediately below the junction of the pitless adapter.

(3) **Well schematic.** The marginal water well intent to drill application must provide well schematic illustrating proposed construction depths, dimensions, materials, and methods as well as the target aquifer, stratigraphy and hydrogeology to be encountered during drilling.

(4) **Sealing off formations.** Cement must be allowed to set a minimum of forty-eight (48) hours before well drilling is resumed. Shorter set times may be requested if approved alternate sealants or accelerants are used. If shorter set times are requested, documentation shall be provided in the marginal water well intent to drill application substantiating the appropriate cement curing time to meet the compressive strengths necessary, consistent with anticipated shut-in pressures. Shorter set times shall not be permitted unless prior approval is granted by the Board. Sealing off of the formations shall be checked by a method acceptable to the Board.

(5) **Cementing service reports.** The well driller shall provide any cementing service reports with the submission of the well log within 30 days of completion. The Board may require preliminary information as it becomes available.

(6) **Cement bond logging.** The well driller shall provide any cement bond logging results created on each well with the submission of the well log within thirty (30) days of completion. The Board may require results of cement bond logging within twenty-four (24) hours of completion.

(7) **Mud logging and Geophysical logging.** The well driller shall provide any mud logging and geophysical logging reports created on each well with the submission of the well log within thirty (30) days of completion. The Board may require results of geophysical logging within twenty-four (24) hours of completion. The Board may require periodic mud logging or lithologic logging during the course of the project.

(8) **Deleterious substances.** The well driller shall contain, dispose of, or remove any deleterious substances from marginal water well activities according to the state's waste management standards.

(9) **Alternate designs.** In the event that an alternate design is required, the well driller shall submit written notification to the Board. The Board may approve or deny the alternate design within 48 hours provided it is demonstrated that the proposed construction will prevent comingling of fresh, marginal, and/or salt water.

**785:35-7-4. Variances to minimum standards for construction of wells**

(a) Variances from any of the minimum standards for construction of wells set forth in this subchapter may be granted by the Board when it is demonstrated that the construction proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variances must be completed on forms provided by the Board and submitted prior to beginning any work related to the variance, unless otherwise approved by the Executive Director of the Board as provided in this section.

(b) Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.

(c) Requests for variances must be signed by the licensed well driller, contain a signature from the landowner of the land where the work is being done, and contain a certification signed by a licensed professional engineer that activities allowed by such variance will not cause pollution; provided however, a certification from a licensed professional engineer shall not be mandatory for a variance request to water well construction minimum standards unless otherwise required by the Executive Director.

(d) Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the groundwater and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.

(e) The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.

**SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES**

**785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes**

(a) **Temporary capping.** When a groundwater well or fresh water observation well is temporarily removed from service, the top of the well casing will be properly sealed with a pitless adapter cap, sanitary well seal, or well casing cap that cannot

easily be removed. A new well shall be properly capped before the well driller leaves the drilling site.

(b) **Time for plugging or completing water well test holes.** Water well test holes shall be properly plugged as provided in this section by the well driller prior to removal of drilling equipment unless the test hole is completed as an observation well for aquifer testing, including the installation of surface casing and cement seals. In the alternative and prior to drilling equipment being removed from site, water well test holes may be temporarily cased with SDR 26 water well casing a minimum of 10 feet below ground and 12 inches above ground. Bentonite shall be installed from 10 feet to 2 feet below land surface and cement grout installed from 2 feet to land surface. The top of casing shall be properly sealed or capped. Permanent completion or plugging shall become the responsibility of the landowner and shall be completed within 60 days of drilling equipment being removed from the site. A written statement from the landowner acknowledging such responsibility shall be obtained and submitted to the Board with the multipurpose completion report. The multi-purpose completion report shall be submitted to the Board within sixty (60) days after plugging or temporary completion of each water well test hole.

(c) **Permanent abandonment.** The following plugging requirements apply if a groundwater well, fresh water observation well, heat exchange well or water well test hole is permanently abandoned, was drilled by a person not holding a valid license or operator certification from the Board, or if the Board determines that the well or test hole was not drilled or completed in compliance with the applicable minimum standards set forth in this Chapter or may otherwise allow pollution to groundwater.

(1) The well driller shall be responsible for plugging the well or test hole if the well drilling equipment is on the drilling site. If a well is abandoned after the well drilling equipment has been removed from the drilling site, the owner of the land where the well or test hole is located shall be responsible for plugging.

(2) If the well or test hole is uncontaminated and unless paragraph 3 or paragraph 5 below applies, fill such well or water well test hole with uncontaminated, compacted drill cuttings and/or uncontaminated surface clay, cement, bentonite pellets or granules, or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout to within fourteen (14) feet of the land surface, and a minimum of ten (10) feet of the annular space and interior of the well casing shall be filled with cement grout to at least four (4) feet below the land surface.

(3) To plug uncontaminated groundwater wells, fresh water observation wells, or heat exchange wells in the alluvium and terrace deposits of the Arkansas, Cimarron, Salt Fork of the Arkansas, North Canadian, Canadian, Washita, North Fork of the Red, Salt Fork of the Red River, Red River, and other streams or rivers authorized by the Board, fill the well with clean, uncontaminated silica sand to within sixteen (16) feet of the land surface, then two (2) feet of bentonite pellets or granules shall be placed on the uncontaminated silica sand, and finally, a minimum of ten (10) feet of cement grout shall be installed in the annular

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space and interior of the well casing to at least four (4) feet below the land surface.

(4) Hand dug water wells shall be filled with uncontaminated surface clay or grout to within six (6) feet of land surface. The lining of the well shall be removed from the top five (5) feet and a minimum of two (2) feet of cement grout shall be installed. The top four (4) feet shall be filled with compacted uncontaminated native soil, unless otherwise directed by the Board.

(5) If the well or water well test hole is contaminated, or if the well or test hole is located at an underground tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, the casing shall be removed or perforated from the bottom of the casing to twenty (20) feet below land surface. The casing shall be removed from twenty (20) feet below land surface to the surface, then the well or test hole shall be plugged with cement grout from the bottom to within four (4) feet of the land surface. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to within four (4) feet of the land surface.

(6) Vertical closed loop heat exchange wells shall be plugged according to standards set forth by Clause 10.9 of ANSI/CSA/IGSHPA C448.3.

[OAR Docket #19-573; filed 6-7-19]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #19-574]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

785:45-1-2. Definitions [AMENDED]

Subchapter 5. Surface Water Quality Standards

Part 1. General Provisions

785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]

785:45-5-5. Water quality standard variance [NEW]

785:45-5-6. Compliance schedules [NEW]

785:45-5-7. Site-specific criteria [NEW]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.282 O.S. §§ 1085.30 and 1085.3a; 27A O.S. § 1-3-101.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 6, 2018

### COMMENT PERIOD:

December 3, 2018 through January 17, 2019

### PUBLIC HEARING:

January 15, 2019

### ADOPTION:

February 19, 2019

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2019

### LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

### FINAL ADOPTION:

May 28, 2019

### EFFECTIVE:

August 11, 2019

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The revision to the "variance" definition (785:45-1-2) will align the definition of "variance" with the proposed revision to Water Quality Standards variance process (785:45-5-5). The revision to the Water Quality Standards Variance process will provide an effective standards tool that allows for both improved water quality over time and regulatory flexibility. The change to 785:45-5-4 strikes the current variance procedures, which are restrictive and ineffective. Additionally, language addressing compliance schedule and site-specific criteria currently in 785:45-5-4 are moved to the new sections 785:45-5-6 and 785:45-5-7, respectively. This revision provides improved clarity and utility of Oklahoma's Water Quality Standards. Moreover, the site-specific criteria (785:45-5-7) language is revised to clarify that site-specific criteria may be developed to address specific waterbody conditions on a case-by-case basis.

The revision to Appendix H, Beneficial Use Designations for Certain Limited Areas of Groundwater, corrects a site location legal description in the Arkansas River Alluvium aquifer.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 785:45-1-2. Definitions

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

"**Abatement**" means reduction of the degree or intensity of pollution.

"**Acute test failure**" means greater than or equal to 50% mortality to appropriate test species at or below the critical effluent dilution after a 48 hour test as provided in OAC 252:690-3-29.

"**Acute toxicity**" means greater than or equal to 50% lethality to appropriate test organisms in a test sample.

"**Alpha particle**" means a positively charged particle emitted by certain radioactive materials. It is the least penetrating of the three common types of radiation (alpha, beta and gamma) and usually is not dangerous to plants, animals or humans.

"**Ambient**" means surrounding, especially of or pertaining to the environment about an entity, but undisturbed and unaffected by it.

**"Aquifer"** means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

**"Aquifer Storage and Recovery Activities" ("ASR")** means activities that exclusively include activities for the storage of water in and recovery of water from an aquifer pursuant to a site-specific aquifer storage and recovery plan authorized by 82 O.S. § 1020.2A. Activities not conducted pursuant to a site-specific aquifer storage and recovery plan shall not be considered ASR activities. For purposes of this chapter, ASR activities also shall not include groundwater recharge or augmentation through a natural connection with a farm pond or other impoundment otherwise authorized by law.

**"Artificial Aquifer Recharge"** means activities with the primary purpose of recharging or augmenting an aquifer with no intention of recovering such water for future use. For purposes of this chapter, Artificial Aquifer Recharge activities shall not include activities specifically authorized pursuant to 82 O.S. § 1020.2(G) or stormwater runoff management practices otherwise authorized by law.

**"Assimilative capacity"** means the amount of pollution a waterbody can receive and still maintain the water quality standards designated for that waterbody.

**"Attainable uses"** means the best uses achievable for a particular waterbody given water of adequate quality. The process of use attainability analysis can, and in certain cases must, be used to determine attainable uses for a waterbody.

**"Background"** means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

**"BCF"** means bioconcentration factor.

**"Beneficial uses"** means a classification of the waters of the State, according to their best uses in the interest of the public.

**"Benthic macroinvertebrates"** means invertebrate animals that are large enough to be seen by the unaided eye, can be retained by a U. S. Standard No. 30 sieve, and live at least part of their life cycles within or upon available substrate in a body of water or water transport system.

**"Best Available Technology"** means the best proven technology, treatment techniques or other economically viable means which are commercially available.

**"Best management practices"** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**"Beta particle"** means a negatively charged elementary particle emitted by radioactive decay that may cause skin burns. It is easily stopped by a thin sheet of metal.

**"Bioconcentration factor"** means the relative measure of the ability of a contaminant to be stored in tissues and thus to

accumulate through the food chain and is shown as the following formula:  $BCF = \text{Tissue Concentration} \text{ divided by } \text{Water Concentration}$ .

**"BMPs"** means best management practices.

**"Board"** means Oklahoma Water Resources Board.

**"BOD"** means biochemical oxygen demand.

**"Carcinogenic"** means cancer producing.

**"Chronic test failure"** means the statistically significant difference (at the 95% confidence level) between survival, reproduction or growth of the test organism at or below the chronic critical dilution after completion of a 7 day test as provided in OAC 252:690-3-29, or other test as approved by the permitting authority and the EPA Regional Administrator, and a control.

**"Chronic toxicity"** means a statistically significant difference (at the 95% confidence level) between longer-term survival and/or reproduction or growth of the appropriate test organisms in a test sample and a control. Teratogenicity and mutagenicity are considered to be effects of chronic toxicity.

**"Coliform group organisms"** means all of the aerobic and facultative anaerobic gram-negative, non-spore-forming rod shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

**"Color"** means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color), but also that color due to suspended matter.

**"Conservative element"** means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or chemical degradation or volatilization.

**"Conservation plan"** means, but is not limited to, a written plan which lists activities, management practices and maintenance or operating procedures designed to promote natural resource conservation and is intended for the prevention and reduction of pollution of waters of the state.

**"Critical dilution"** means, for chronic whole effluent toxicity testing, an effluent dilution expressed as a percentage representative of the dilution afforded a wastewater discharge according to the appropriate Q\*-dependent chronic mixing zone equation.

**"Critical temperature"** means the higher of the seven-day maximum temperature likely to occur with a 50% probability each year, or 29.4°C (85°F).

**"Criterion"** means a number or narrative statement assigned to protect a designated beneficial use.

**"CWAC"** means Cool Water Aquatic Community.

**"Degradation"** means any condition caused by the activities of humans which result in the prolonged impairment of any constituent of the aquatic environment.

**"Designated beneficial uses"** means those uses specified for each waterbody or segment whether or not they are being attained.

**"Dissolved oxygen"** means the amount of oxygen dissolved in water at any given time, depending upon the water temperature, the partial pressure of oxygen in the atmosphere

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in contact with the water, the concentration of dissolved organic substances in the water, and the physical aeration of the water.

**"DO"** means dissolved oxygen.

**"DRASTIC"** means that standardized system developed by the United States Environmental Protection Agency for evaluating groundwater vulnerability to pollution, based upon consideration of depth to water (D), net recharge (R), aquifer media (A), soil media (S), topography (T), impact of the vadose zone media (I), and hydraulic conductivity (C) of the aquifer.

**"EPA"** means the United States Environmental Protection Agency.

**"Ephemeral stream"** means an entire stream which flows only during or immediately after a rainfall event, and contains no refuge pools capable of sustaining a viable community of aquatic organisms.

**"Epilimnion"** means the uppermost homothermal region of a stratified lake.

**"Eutrophication"** means the process whereby the condition of a waterbody changes from one of low biologic productivity and clear water to one of high productivity and water made turbid by the accelerated growth of algae.

**"Existing beneficial uses"** means those uses listed in Title 40 CFR §131.3 actually attained by a waterbody on or after November 28, 1975. These uses may include public water supplies, fish and wildlife propagation, recreational uses, agriculture, industrial water supplies, navigation, and aesthetics.

**"Existing point source discharge(s)"** means, for purposes of 785:45-5-25, point source discharges other than stormwater which were/are in existence when the ORW, HQW, or SWS, or SWS-R designation was/is assigned to the water(s) which receive(s) the discharge. The load from a point source discharge which is subject to the no increase limitation shall be based on the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the limitation was assigned. Publicly owned treatment works may use design flow, mass loadings or concentration as appropriate if those flows, loadings or concentrations were approved as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, SWS or SWS-R limitation.

**"Fecal coliform"** means a group of organisms common to the intestinal tracts of humans and of animals. The presence of fecal coliform bacteria in water is an indicator of pollution and of potentially dangerous bacterial contamination.

**"Fresh groundwater"** means groundwater with naturally-occurring concentrations of total dissolved solids less than 10,000 mg/L, or with levels of total dissolved solids of 10,000 or more mg/L caused by human activities.

**"Geometric mean"** means the nth root of the product of the samples.

**"Groundwater"** means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82: 1020.1(A)]

**"Groundwater basin"** means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities". [82: 1020.1(C)]

**"HLAC"** means Habitat Limited Aquatic Community.

**"HQW"** means High Quality Water.

**"HUC"** means hydrologic unit code utilized by the United States Geologic Survey and other federal and state agencies as a way of identifying all drainage basins in the United States in a nested arrangement from largest to smallest, consisting of a multi-digit code which identifies each of the levels of classification within two-digit fields.

**"Intolerant climax fish community"** means habitat and water quality adequate to support game fishes or other sensitive species introduced or native to the biotic province or ecological region, which require specific or narrow ranges of high quality environmental conditions.

**"Lake"** means:

(A) An impoundment of waters of the state over 50 acre-feet in volume which is either:

(i) owned or operated by federal, state, county, or local government or

(ii) appears in Oklahoma's Clean Lakes Inventory.

(B) Surface impoundments which are used as a treatment works for the purpose of treating stabilizing or holding wastes are excluded from this definition.

**"LC50"** means lethal concentration and is the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

**"Long-term average flow"** means an arithmetic average stream flow over a representative period of record.

**"MDL"** means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0). MDL is dependent upon the analyte of concern.

**"Mixing zone"** means when a liquid of a different quality than the receiving water is discharged into the receiving water, a mixing zone is formed. Concentration of the liquid within the mixing zone decreases until it is completely mixed with receiving water. A regulatory mixing zone is described in 785:45-5-26.

**"Narrative criteria"** means statements or other qualitative expressions of chemical, physical or biological parameters that are assigned to protect a beneficial use.

**"Natural source"** means source of contamination which is not human induced.

**"NLW Impairment Study"** means a scientific process of surveying the chemical, physical and biological characteristics of a nutrient threatened reservoir to determine whether the reservoir's beneficial uses are being impaired by human-induced eutrophication.

**"Non-conservative element"** means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

**"Nonpoint source"** means a source of pollution without a well defined point of origin.

"**Normal stream flow conditions**" means flow corresponding to low gradient areas in the hydrograph.

"**NTU**" means Nephelometric Turbidity Unit, which is the unit of measure using the method based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension (formazin). The higher the intensity of scattered light, the higher the turbidity.

"**Numerical criteria**" means concentrations or other quantitative measures of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"**Numerical standard**" means the most stringent of the numerical criteria assigned to the beneficial uses for a given stream.

"**Nutrient impaired reservoir**" means a reservoir with a beneficial use or uses determined by an NLW Impairment Study to be impaired by human-induced eutrophication.

"**Nutrient-limited watershed**" means a watershed of a waterbody with a designated beneficial use which is adversely affected by excess nutrients as determined by Carlson's Trophic State Index (using chlorophyll-a) of 62 or greater, or is otherwise listed as "NLW" in Appendix A of this Chapter.

"**Nutrients**" means elements or compounds essential as raw materials for an organism's growth and development; these include carbon, oxygen, nitrogen and phosphorus.

"**ORW**" means Outstanding Resource Water.

"**OWRB**" means Oklahoma Water Resources Board.

"**PCBs**" means polychlorinated biphenyls.

"**Picocurie**" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"**Point source**" means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigation agriculture.

"**Pollutant**" means any material, substance or property which may cause pollution.

"**Pollution**" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life". [82: §1084.2(1)]

"**Polychlorinated biphenyls**" means a group of organic compounds (206 possible) which are constructed of two phenyl rings and more than one chlorine atom.

"**PQL**" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"**Put and take fishery**" means the introduction of a fish species into a body of water for the express purpose of sport fish harvest where existing conditions preclude a naturally reproducing population.

"**Q\***" means dilution capacity.

"**Salinity**" means the concentration of salt in water.

"**Sample standard**" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus two standard deviations of the mean.

"**Seasonal base flow**" means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"**Seasonal seven-day, two-year low flow**" means the 7-day low flow of a stream likely to occur with a 50% probability for a season with the applicable dates in Table 1 of Appendix G of OAC 785:45.

"**Seasonal 7Q2**" means the seasonal seven-day, two-year low flow.

"**Sensitive representative species**" means *Ceriodaphnia dubia*, *Daphnia magna*, *Daphnia pulex*, *Pimphales promelas* (Fathead minnow), *Lepomis macrochirus* (Bluegill sunfish), or other sensitive organisms indigenous to a particular waterbody.

"**SWS**" means Sensitive Public and Private Water Supply.

"**SWS-R**" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed water for the purpose of indirect potable reuse.

"**Seven-day, two-year low flow**" means the 7-day low flow of a stream likely to occur with a 50% probability each year.

"**7Q2**" means the seven-day, two-year low flow.

"**Standard deviation**" means a statistical measure of the dispersion around the arithmetic mean of the data.

"**Standard Methods**" means the publication "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation.

"**Standards**", when capitalized, means this Chapter, which constitutes the Oklahoma Water Quality Standards described in 82 O.S. §1085.30. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

"**Storm water**" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"**Subwatershed**" means a smaller component of the larger watershed.

"**Synergistic effect**" means the presence of cooperative pollutant action such that the total effect is greater than the sum of the effects of each pollutant taken individually.

"**Thermal pollution**" means degradation of water quality by the introduction of heated effluent and is primarily a result of the discharge of the cooling waters from industrial processes, particularly from electrical power generation.

"**Thermal stratification**" means horizontal layers of different densities produced in a lake caused by temperature.

"**Variance**" means a temporary (not to exceed three years) exclusion of a specific numerical criterion for a specific discharge to a specific waterbody. is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance.

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"**Warm Water Aquatic Community**" means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support intolerant climax fish communities and includes an environment suitable for the full range of warm water benthos.

"**Wastes**" means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state". [82 O. S. §1084.2(2)]

"**Waterbody**" means any specified segment or body of waters of the state, including but not limited to an entire stream or lake or a portion thereof.

"**Water quality**" means physical, chemical, and biological characteristics of water which determine diversity, stability, and productivity of the climax biotic community or affect human health.

"**Waters of the state**" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof [82:1084.2(3)].

"**Watershed**" means the drainage area of a waterbody including all direct or indirect tributaries.

"**WWAC**" means Warm Water Aquatic Community.

"**Yearly mean standard**" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus one standard deviation of the mean. The moving yearly mean standard is an average of the last five years of available data.

"**Zone of passage**" means a three dimensional zone expressed as a volume in the receiving stream through which mobile aquatic organisms may traverse the stream past a discharge without being affected by it. A regulatory zone of passage is described in 785:45-5-26.

## SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

### PART 1. GENERAL PROVISIONS

#### 785:45-5-4. Applicability of narrative and numerical criteria

(a) For purposes of permitting discharges for attainment of numerical criteria or establishing site specific criteria, streamflows of the greater of 1.0 cfs or 7Q2 shall be used to determine appropriate permit conditions unless otherwise provided in OAC 785:45 or 785:46.

(b) When numerical criteria do not apply, water column conditions including dissolved oxygen concentrations, organoleptic compounds, nutrients, and oil and grease shall be maintained to prevent nuisance conditions caused by man's activities.

(c) Narrative criteria listed in this Chapter shall be maintained at all times and apply to all surface waters of the State.

(d) If more than one narrative or numerical criteria is assigned to a stream, the most stringent shall be maintained.

(e) A temporary variance may be granted at the sole discretion of the Oklahoma Water Resources Board in limited circumstances only for specific numerical criteria listed in Table 2 of Appendix G of this Chapter addressing water column numerical criteria to protect human health for the consumption of fish flesh and water, for specific numerical criteria listed in Appendix G Table 2 addressing numerical criteria for toxic substances, and for specific numerical criteria listed in Appendix G Table 2 addressing water column numerical criteria to protect human health for the consumption of fish flesh only.

(1) **General requirements and time limits for variance.** A variance or exception to listed numeric criteria may only be granted by the Board so long as the applicant complies with all procedural and application requirements, demonstrates to the satisfaction of the Board that the necessary conditions specified in 785:45-5-4(e)(4) exist, and that the variance will not otherwise be contrary to law or inconsistent with the Board's statutory duties. Variances shall be allowed only in very limited situations. In no circumstances shall a variance be granted which exceeds three (3) years in duration and no renewal shall be allowed.

(2) **Applications and related requirements.** A variance may only be considered and granted upon application of a person for discharge from a specific facility to a specific stream segment(s). All applications for a variance must contain or include as attachments at the time of filing, at a minimum, all written documentation which supports a finding that the necessary conditions listed in 785:45-5-4(e)(4) exist, a description of the specific numerical criterion for which the variance is requested, the legal description of the stream segment(s) which would receive the discharge and the location of any other affected waters, and such other information as the Board may specify as necessary for adequate review of the application. A fee, as set forth in Chapter 5 of this Title, shall be submitted with the application for variance.

(3) **Procedure and scope of variance.**

(A) A variance may be granted only by the Oklahoma Water Resources Board, shall be restricted to those listed numerical criteria for which an application is filed, and shall apply only to the specific facility and specific stream segment(s) which receives the discharge.

(B) The applicant for a variance must prepare a public notice whose contents shall reflect the nature of the variance applied for and such other information as the Board may deem appropriate, and shall state the date, time and location of public hearing on the application. Such notice, after submission to and approval by the Board, shall be published at the expense of the applicant once a week for two consecutive weeks, minimum seven day interval, in a newspaper(s) having general circulation in the county(ies) in which the discharge is located. The Board may

require additional publication of the notice in additional counties or publications at the applicant's expense. Proof of publication shall be provided as directed by the Board.

(C) The applicant shall deliver or mail such public notice to all persons who are on a standing list for receiving notice of such applications for variances. Such standing list shall be established and maintained by the Board and shall include the Office of the Attorney General, the chief executive of each affected municipality and county, all persons who shall request to receive such notices, and such other persons as may be specified by the Board.

(D) An administrative hearing shall be held not earlier than twenty one days following the last publication or mailing of notice. At the hearing, the burden of proof shall be upon the applicant to produce evidence which demonstrates to the satisfaction of the Board that all conditions and requirements of these rules and applicable law are met. All interested persons may present oral or written comments prior to or at the hearing on the application, as specified in the notice.

(4) **Conditions for variance.**

(A) A variance shall be effective only after approval by the U. S. Environmental Protection Agency.

(B) A variance may be granted by the Board only if the following additional conditions are met:

(i) The granting of a variance will not result in the violation of any other OWQS, including those specified for ORW, HQW or other classes of waters; and

(ii) New or previously unavailable information regarding toxicity, bioavailability, persistence or degradation of a specific pollutant refutes the scientific basis for the effective numerical criterion; or

(iii) Non attainment of a numerical criterion is documented in the stream segment which is the subject of the variance application or in close proximity upstream of such segment, and there is no increase in the concentration of the pollutant which is the subject of the variance outside the mixing zone or at some point downstream of the facility following complete mixing if appropriate relative to the concentration upstream of the facility, and

(I) non attainment is demonstrated to be the result of natural source concentrations of that pollutant in the water column, sediment or aquatic life, or

(II) non attainment is the result of human caused conditions which cannot be remedied or would cause more environmental damage if corrected than if left in place.

(f) Schedules for compliance with the Oklahoma Water Quality Standards may be granted to persons or facilities discharging wastes into waters of the state unless such discharge

creates an actual or potential hazard to the public health in accordance with 82 O.S. §1085.30(D).

(g) Site specific criteria that have been derived for certain waterbodies and conditions are promulgated in Appendix E of this chapter. These site specific criteria supersede other numeric criteria promulgated elsewhere in this chapter if it is shown to the satisfaction of the Board that properties of the discharge or the circumstances surrounding the development of the site specific criteria have not significantly changed since the promulgation of those site specific criteria. Such criteria and the conditions around which they were derived, including but not limited to local environmental factors and effluent characteristics, shall be re evaluated by the permit holder with each subsequent discharge permit renewal application or major modification request to determine if any significant changes have affected the propriety of the site specific criteria.

**785:45-5-5. Water quality standard variance**

(a) A water quality standards variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance. OWRB rulemaking and approval is required for all water quality standard variances. All water quality standard variances shall be developed in accordance with and meet the requirements of 40 CFR 131.14 and be subject to U.S. Environmental Protection Agency review and approval or disapproval. The requirements of 40 CFR 131.14 are incorporated by reference into this document.

(b) A water quality standard variance may be developed on a discharger specific, reach specific, waterbody specific, or other site-specific basis. The time-limited designated use and criterion associated with the water quality standard variance do not replace the underlying waterbody designated use and criterion. Additionally, all other applicable water quality standards not specifically addressed by the variance remain applicable. A water quality standard variance serves as the applicable water quality standard for implementing Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit limits and CWA §401 certification for the term of the water quality standard variance. The underlying waterbody designated use and criterion shall remain applicable for all other CWA purposes.

**785:45-5-6. Compliance schedules**

Schedules for compliance with the Oklahoma Water Quality Standards may be granted to persons or facilities discharging wastes into waters of the state unless such discharge creates an actual or potential hazard to the public health in accordance with 82 O.S. §1085.30(D).

**785:45-5-7. Site-specific criteria**

(a) As needed, site-specific criteria may be developed to reflect site-specific waterbody conditions. Site-specific criteria must be based on sound scientific rationale and assure protection of beneficial uses. Site-specific criteria are developed on a case-by-case basis and depending on the particular case there

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may be various acceptable scientific approaches for developing site-specific criteria. However, in all cases prior to initiating development of a site-specific criteria a detailed workplan consistent with OWRB and or EPA technical guidance, if available, shall be submitted for review and approval by OWRB Water Quality Division Chief. Prior to the initiation of any work

toward development of a site-specific criterion, interested parties shall coordinate with OWRB technical staff. Additional information and site-specific criteria adopted for certain waterbodies and conditions are found in Appendix E.

(b) Fees required for site-specific criteria will be charged in accordance with Chapter 5 of this Title.

**APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [REVOKED]**

**APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [NEW]**

A. Within Oklahoma there are some bodies or areas of groundwater the quality of which is not suitable for the beneficial uses that are designated on a default basis in OAC 785:45-7-3(b). In most cases this unsuitability is caused by natural conditions or irreversible human-induced impacts such as pollution. Consequently, it is necessary to provide for beneficial use designations for these limited areas of groundwater which are more accurate and appropriate than the default designations in 785:45-7-3(b). The absence of an area of a groundwater formation from this appendix does not indicate that area is free from contamination or has quality suitable for any beneficial use.

B. The groundwater formations or portions thereof that require special designations are identified in the tables that follow in this Appendix. The groundwater formations or units are identified by their name (e.g., "Garber Wellington") and legal description (e.g., "2-4, 9-11, 13-16 T2N R20W " denoting section(s), Township and Range). The area identified may be localized and not necessarily inclusive of the entire hydrogeologic basin or groundwater formation. The tables also set forth a general description of the physical location above the groundwater formation or unit for use as a general point of reference. The tables also set forth columns to show the groundwater classifications and beneficial uses which are designated for each identified area of groundwater. A "Depth Zone" also is indicated, to which the beneficial uses and "Remarks" listed in following columns are applicable.

C. Designations of beneficial uses for an identified groundwater formation or portion thereof are reflected in the tables by the presence of a dot ("•") in the columns to the right of the groundwater name and location. An empty space in a column means that column's beneficial use or subcategory thereof is not designated for that groundwater. Groundwater not identified in this Appendix is subject to the default designations detailed in OAC 785:45-7-3.

D. The state environmental agency that requested the groundwater formation or unit to be so identified and designated with certain beneficial uses and/or limitations is shown in the column headed "Agency". A specific division within that agency may also be listed. Questions relating to the quality of the groundwater found in any particular formation or unit, or concerns related to any comment in the "Remarks" column, should be addressed to the agency denoted in the "Agency" column.

E. The presence of any comment in the "Remarks" column denotes special circumstances which are applicable only to the groundwater formation or unit so identified. These comments may refer to certain constituents of the groundwater at that location, special well construction requirements, or other information deemed pertinent by the agency that requested this listing.

**F. Definitions**

- "ACOG" means Association of Central Oklahoma Governments
- "Corp Comm" means Oklahoma Corporation Commission
- "DEQ" means Oklahoma Department of Environmental Quality
- "SEP" means Supplemental Environmental Projects
- "RCRA" means Resource Conservation and Recovery Act
- "VCP" means Voluntary Compliance Program

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Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Garber-Wellington (Thunderhead Hills)	W 1/2 of W 1/2 of Section 20, T 14 N, R 2 W1M; W 1/2 of NW 1/4 and NW 1/4 of SW 1/4 of Section 29, T 14 N, R 2 W1M	Along and 1/4 mile east of Coltrane from Danforth Rd to Sherrywood Rd, Edmond, Oklahoma County	85 – 200 ft. deep; 1/4 mile wide by at least 1 3/4 mile long	2		•		Corp Comm, Oil & Gas Division, & ACOG	Brine plume moving south about 80 ft/year. Case/cement new wells through upper affected zone.
Garber-Wellington (Double Eagle / 4 <sup>th</sup> St Superfund site)	SE 1/4 of Section 35, T 12 N, R 3 W1M and SW 1/4 of Section 36, T 12 N, R 3 W1M	Oklahoma County	0 – 160 ft.	2		•	•	DEQ	Brine, chlorinated solvents and hydrocarbons. Special well construction required.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Boone (Tar Creek Superfund site)	Sections 13, 14, 23, 24, 25, 26, 35, and 36 of T 29 N, R 22 EIM. Sections 13-36 of T 29 N, R 23 EIM. Sections 17-19, W 1/2 of Section 20, W 1/2 of Section 29, and Sections 30-32 of T 29 N, R 24 EIM. Section 1, E 1/2 of Section 2, E 1/2 of Section 11, Section 12, N 1/2 of Section 13, NE 1/4 of Section 14 all in T 28 N, R 22 EIM. Section 1, W 1/2 of Section 5, Section 6, Section 7, W 1/2 of Section 8, NW 1/4 of Section 17, N 1/2 of Section 18 all in T 28 N, R 23 EIM, W 1/2 of Section 5, Section 6 all in T 28 N, R 24 EIM.	Ottawa County	0 – 350 ft.	2	•	•	•	DEQ Land Protection Division	Acidic conditions, mine voids, and toxic metals (lead, cadmium and arsenic exceeding MCLs) may be present in the Boone aquifer. Therefore special protective well construction is required to seal off the Boone to protect the underlying Roubidoux aquifer. For Boone wells, competent groundwater testing for toxic metals is required for potable and domestic use; and treatment may be required when groundwater exceeds the MCLs for lead (15 µg/l), arsenic (10 µg/l), or cadmium (5 µg/l).

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Quaternary Terrace (Kingfisher Wellhead Protection Area)	Section 33, SW 1/4 of Section 36 in T 18 N, R 7 WIM. SW 1/4 of Section 1, NW 1/4 and S 1/2 of Section 2, N 1/2 of Section 3, N 1/2 of Section 4, NE 1/4 of Section 11, and Section 12 all in T 17 N, R 7 WIM	Kingfisher County	0 – 100 ft.	1	•	•	•	DEQ	Zone 1 Wellhead Protection Area - no pollution sources
Southwestern Oklahoma (Altus AFB area)	Sections 34-36 in T 3 N, R 20 WIM. Sections 1-3, Sections 10-15, and Sections 22-24 all in T 2 N, R 20 WIM	North of US 62, eastern edge of City of Altus and entire AFB, Jackson County	0 – 60 ft.	3		•	•	OWRB	TCE & by-products - Remediation activity in-place
Ogallala (Dobson Ranch)	One square acre within NW 1/4 of Section 17, T 11 N, R 26W IM	State Highway 152, approx. four miles west of Sweetwater, OK, Roger Mills County	0 – 20 ft.	2	•	•	•	DEQ – VCP	Restriction on groundwater use within the 1 square mile recorded on a deed notice due to Benzene contamination. See DEQ or county clerk for location details
Quaternary Terrace Deposits – (Cornerstone Shopping Center)	SE 1/4 of Section 16, T 12 N, R 4 WIM, Approx six (6) acres of WEST PARK ADDITION to Oklahoma County, Oklahoma..	3900 N. MacArthur Avenue, Oklahoma City, Oklahoma County, Oklahoma	0 – 22 ft.	2	•	•	•	DEQ – VCP	Tetrachloro-ethylene - Deed restriction on file. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Alluvium & Terrace Deposits – (OKC Urban Renewal, Phase I)	21.6 acres of the NW 1/4 of Section 3, T 11 N, R 3 W1M	An area bounded to the South of Reno Avenue, East of the BNSF railroad tracks, North of Interstate 40/or its replacement street and west of a line extended from Stiles Avenue to Interstate 40/or its replacement street in Oklahoma City, Oklahoma County, Oklahoma.	0 – 30 ft.	2	•	•	•	DEQ – VCP	Deed restriction on groundwater use. See DEQ or county clerk for location details.
Coffeyville Formation (Compass Industries Landfill Superfund site)	SE 1/4 of NE 1/4 and NE 1/4 of SE 1/4 of Section 13, T 19 N, R 11 E1M, and S 1/2 of NW 1/4 and N 1/2 of SW 1/4 of Section 18, T 19 N, R 12 E1M	7600 W 26th St, Tulsa, Tulsa County, Oklahoma	0 – 105 ft.	2	•	•	•	DEQ – Superfund	Deed restriction on groundwater use for any purpose. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Weatherford Member of the Cloud Chief Formation & Rush Springs Sandstone Formation (Oklahoma Refining Company Superfund site)	S 1/2 of SW 1/4 of Section 18, T 5 N, R 9 W1M and NW 1/4 of Section 19, T 5 N, R 9 W1M, and NW 1/4 of Section 19, T 5 N, R 9 W1M, and SE 1/4 of SE 1/4 of Section 13, T 5 N, R 10 W1M and E 1/2 of NE 1/4 of NE 1/4 of Section 24, T 5 N, R 10 W1M	South Baskett St, Cypi, Caddo County, Oklahoma	0 – 145 ft.	2	•	•	•	DEQ – Superfund	Deed restriction on disturbing landfill caps & on groundwater use for any purpose due to hydrocarbon contamination. See DEQ or county clerk for location details.
North Canadian Alluvium (Tenth Street Superfund site)	2.931 acres in the NW 1/4 of Section 31, T 12 N, R 2 W1M	3200 NE 10th St Oklahoma City, Oklahoma	0 – 20 ft.		•	•	•	DEQ – Superfund	Deed restriction on drilling of any type of wells through the landfill cap or into the landfill. See DEQ or county clerk for location details.
North Canadian Alluvium and Garber (Mosley Road Landfill Superfund site)	71.765 acres in NE 1/4 of Section 21, T 12 N, R 2 W1M	Mosley Road Between NE 23 & NE 36 Oklahoma City, Oklahoma	0 – 150 ft.	2	•	•	•	DEQ – Superfund	Restriction on groundwater use for any purpose. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Tallant Formation (Blackstar Performance)	SE 1/4 of Section 25, T 20 N, R 8 E1M and NE 1/4 of Section 25, T 20 N, R 8 E1M	East of Highway OK-48, about 4 miles north of Highway OK-51 intersection, in Terlton, Pawnee County, Oklahoma	0 – 30 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – RCRA	1,1,1-Trichloro-ethane & 1,1-Dichloroethane - Depth of contamination unknown, private wells to 200 feet are impacted. See DEQ for additional details.
N. Canadian Terrace Deposits underlain by Hennessey Group (OKC Solvent Plume)	Approximately 80 acres in NE 1/4 of Section 27, T 12 N, R 4 W1M and NW 1/4 of Section 27, T 12 N, R 4 W1M	Between NW 23rd and NW 19th and N Meridian and Ann Arbor, Oklahoma City, Oklahoma County, Oklahoma	0 – 30 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – SEP	Tetrachloro-ethylene (max. 1200 ppb) & Trichloroethylene (max. 35 ppb) - Plume not delineated; private wells impacted. See DEQ for details.
Garber-Wellington (Eagle Industries)	Approximately 6 acres in SE 1/4 of Section 7, T 11 N, R 1 W1M	North of SE 29th & West of Westminister Road, Midwest City, Oklahoma County, Oklahoma	0 – 50 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – RCRA	Trichloroethylene (max 2280 ppb) - Plume not delineated. See DEQ for details.
East Central Oklahoma bedrock	SE 1/4 of SE 1/4 of SE 1/4 of Section 5, T 7 N, R 9 E1M	Hughes County	200 ft. deep; Aerial extent unknown	2	•	•	•	Corp Comm, Oil & Gas Division	Brine affecting aquifer. Disposal well offsetting old (now plugged) oil well was the most likely conduit.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Garber-Wellington Sandstone Formation	NW 1/4 of SE 1/4 of Section 1, T 9 N, R 2 E1M	Pottawatomie County	160 – 200 ft. deep; 20 Acres	2	•	•	•	Corp Comm, Oil & Gas Division	Brine affecting aquifer. Now plugged disposal well was the most likely source.
Rush Springs Sandstone, Marlow Formation. (Cyril Plume)	Portions of Sections 1 and 12 in T 5 N, R 10 W1M and Sections 6 and 7 in T 5 N, R 9 W1M and Section 36, T 6 N, R 10 W1M and Section 31, T 6 N, R 9 W1M	2-3 miles north of Cyril, Caddo County.	Up to 450 ft. deep; some saline groundwater discharge into Little Washita River tributaries; ~960 acre plume	2	•	•	•	Corp Comm, Oil & Gas Division	~960 acre plume moving S-SW @ 90/year; 30 year monitoring program started in 1999, Cyril municipal wells affected were abandoned.
Blaine (Drummond Flats)	NE 1/4 of Section 33, T 22 N, R 8 W1M	From NE corner of Drummond 4 miles north, 1 west, 1 south and 3/8 west. Near Turkey Creek.	20 – 50 ft. in affected wells.	2	•	•	•	Corp Comm, Oil & Gas Division	Drummond Flats, water has historical contamination.
Terrace Deposits (Drummond Flats)	SW 1/4 of Section 12, R 21 N, R 9 W1M	From Ames, 1/2 mile east, 4 miles north, 3 3/4 east, north into site.	About 40 ft. deep in affected wells.	2	•	•	•	Corp Comm, Oil & Gas Division	Drummond Flats, water has historical contamination.
Arkansas River Alluvium (Sand Springs Petrochemical Superfund site)	W 1/2 of NW 1/4 of Section 13, T 19 N, R 11 E1M and NWE 1/4 of Section 14, T 19 N, R 11 E1M	Tulsa County	0 – 37 ft.	2	•	•	•	DEQ Land Protection Division	Metals, VOC Special Well Construction Required.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
North-Central Oklahoma (former Farmland Feedmill site)	36.26 acres in SW/4 19, T22N, R6W/M	3013 South Van Buren Street, Enid, Garfield County, Oklahoma	0 – 30 ft. depth of contamination not defined.	2	•	•	•	DEQ, Water Quality Division	Restriction on groundwater use due to nitrate contamination. Nitrate concentrations exceed drinking water standards. Therefore, drinking water wells should not be constructed in this area. See DEQ Water Quality Division for location details.
Vanoss Group (Hudson Refinery Superfund site)	NE 1/4 of NW 1/4 of Section 4, T 17 N, R 5 EIM and SW 1/4 of Section 33, T 18 N, R 5 EIM	Payne County	18 – 168 ft.	2	•	•	•	DEQ, Land Protection Division	Deed restriction was filed with county prohibiting groundwater use for any purpose due to hydrocarbon contamination. See DEQ-Land Protection Division or county clerk for location details.

# Permanent Final Adoptions

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
North-Central Oklahoma (Blackwell Zinc Company (BZC) site	Portions of Sections 14, 15, 16, 21, 22, 23, 26, 27 and 28 of T27N-R1W. It is generally located to the north and south between 500 ft. north of Doolin Avenue and Adams Avenue and to the west and east between 21st Street and 200 ft. east of Main Street, City of Blackwell	Kay County	0 – 40 ft.	2	•	•	•	DEQ, Land Protection Division	City of Blackwell Ordinance No. 2801 prohibiting installation of groundwater wells within the groundwater protective area due to cadmium, & zinc contamination. Contact DEQ Land Protection Division or city for location details.
Hennessey Shale/Garber-Wellington	NE 1/4 of NE 1/4 of Sec. 31, T 14 N, R 3 W1M	West of the Intersection of N. 178 <sup>th</sup> Street & Pennsylvania, Oklahoma County	0 – 50 ft.	2	•	•	•	Corp Comm, ACOG, OWRB	Chloride impacted groundwater in upper zone of Hennessey Shale/Garber-Wellington formations, case and cement to a depth of 50 ft.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Rush Springs Aquifer (Putnam-Oswego former Gas Plant)	NWNNWNW 1/4 of Section 35, T 16 N, R 16 W & NENENE 1/4 of Section 34, T 16 N, R 16 N	SE & SW corners of intersection of County Road N2310 & County Road E0820 in Putnam, Dewey County, Oklahoma	0 - 50 ft.	2	•	•	•	Corp Comm	Petroleum hydrocarbons impacting shallow aquifer. Case off from zero to fifty (0-50) ft. below ground surface, completing any water well below this zone

[OAR Docket #19-574; filed 6-7-19]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #19-575]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 15. Use Support Assessment Protocols  
785:46-15-3. Data requirements [AMENDED]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 6, 2018

### COMMENT PERIOD:

December 3, 2018 through January 15, 2019

### PUBLIC HEARING:

January 15, 2019

### ADOPTION:

February 19, 2019

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2019

### LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HJR 1022

### FINAL ADOPTION:

May 28, 2019

### EFFECTIVE:

August 11, 2019

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The use support assessment protocols in OAC 785:46-15 have been revised to update and clarify data requirements. Additionally, the assessment of aesthetics support has been revised to clarify that nutrient thresholds and turbidity are considered as means for protocol implementation.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

### 785:46-15-3. Data requirements

(a) **General.** In order to determine whether a given beneficial use of a waterbody is supported, scientific data from the waterbody shall be used as prescribed in this Section. Data shall be collected and analyzed in a manner consistent with testing procedures provided in 785:45-1-4 or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 785:46-15-3(g).

All existing data available for a waterbody shall be used in the analysis, subject to the spatial, temporal and other requirements of this Section.

### (b) Spatial coverage.

(1) **General for streams.** The spatial extent of assessment of use support in terms of stream miles shall be determined after taking into account existing data, spatial distribution of monitoring sites, sources of pollution and influence of tributaries. Major hydrological features, such as the confluence of a major tributary or a dam, may limit the spatial extent of an assessment based on one station.

(2) **Non-wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 25 stream miles for non-wadable streams.

(3) **Wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 10 stream miles for wadable streams.

(4) **Lakes.** The spatial extent of assessment of use support in terms of lake surface acres shall be estimated based on the spatial distribution of monitoring sites having the requisite number of samples, sources of pollution, influence of tributaries and best professional judgment. Arms or portions of lake may be treated separately from the main body of a lake. Unless it is demonstrated to the contrary, a single site shall be considered representative of an entire lake or an arm of no more than two hundred and fifty surface acres in size.

(5) **Spatial limitation for sampling sites.** For purposes of this Subchapter, observations, samples, and other data shall not be taken within any regulatory mixing zone.

### (c) Temporal coverage.

(1) **General.** Observations, samples or other data collected for purposes of assessing use support shall be taken to avoid temporal bias, and seasonality shall be represented in the sampling scheme.

(2) **Streams.** Data no older than five years old shall be utilized in assessing use support for a stream unless

(A) the data available from the preceding five year period is insufficient to satisfy the requirements of 785:46-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than five years old may be utilized, or

(B) the provisions of 785:46-15-4(b)(3) or 785:46-15-4(c)(3) apply.

(3) **Lakes.** Data no older than ten years old shall be utilized in assessing use support for a lake unless

(A) the data available from the preceding ten year period is insufficient to satisfy the requirements of 785:46-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than ten years old may be utilized, or

(B) the provisions of 785:46-15-4(b)(3) or 785:46-15-4(c)(3) apply.

### (d) Minimum number of samples.

(1) **Streams.** Except when (f) of this Section or any of subsections (e), (h), (i), (j), (k), (l), or (m) of 785:46-15-5

applies, a minimum of 10 samples shall be required to assess beneficial use support due to field parameters including but not limited to DO, pH and temperature, and due to routine water quality constituents including but not limited to coliform bacteria, dissolved solids and salts. Analyses may be aggregated to meet the 10 sample minimum requirements in non-wadable stream reaches that are 25 miles or less in length, and in wadable stream reaches that are 10 miles or less in length, if water quality conditions are similar at all sites. Provided, a minimum of 10 samples shall not be necessary if the existing samples already assure exceedance of the applicable percentage of a prescribed screening level.

(2) **Lakes.** Except when (f) of this Section applies, a minimum of 20 samples shall be required on lakes of more than 250 surface acres to assess beneficial use support due to water quality parameters including but not limited to DO, pH and temperature. A minimum of 20 samples shall likewise be required on such lakes for other routine water quality constituents including but not limited to coliform bacteria, chlorophyll a, and dissolved solids. A minimum of 10 samples shall be required on lakes or arms of 250 surface acres or less. Samples may be aggregated to meet the minimum requirements of this paragraph.

(3) **Toxicants.** Notwithstanding any other provision of this Subchapter, a minimum of five samples shall be required to determine that a beneficial use is supported with respect to all toxicants in water. A determination that a beneficial use is partially supported or not supported with respect to toxicants may be made upon less than five samples. Samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b) and (c) of this Section in order to satisfy the minimum sample requirement of this paragraph. Additional samples for the calculation of pH and hardness dependent acute and chronic criteria shall be collected as required by OAC 785:46-5-8.

(1) Except when (f) of this Section applies, or unless otherwise noted in subchapter 785:46-15 for a particular parameter, a minimum number of samples shall be required to assess beneficial use support.

(A) For streams and rivers, a minimum of 10 samples shall be required.

(B) For lakes greater than 250 surface acres, a minimum of 20 samples shall be required.

(C) For lakes 250 surface acres or smaller, a minimum of 10 samples shall be required.

(D) For toxicants for the protection of the Fish and Wildlife Propagation and Public and Private Water beneficial uses, a minimum of 5 samples shall be required.

(2) In order to satisfy the minimum sample requirements of this sub-section, samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b), (c), and (d) of this Section.

(3) The prescribed minimum samples shall not be necessary if the available samples already assure exceedance of the applicable percentage for beneficial use assessment.

(4) If a mathematical calculation including, but not limited to, a mean, median, or quartile, is required for assessment, a minimum of ten samples shall be required, regardless of the parameter type.

(5) Additional samples for the calculation of temperature, pH and hardness dependent acute and chronic criteria shall be collected as required by OAC 785:46-5-8.

(e) **Application of PQL.**

(1) **Criteria above PQL.**

(A) If sample values are below the PQL for a parameter whose criterion is above the PQL, appropriate nonparametric statistical measures shall be used to determine the reporting value.

(B) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is above the PQL, then such value shall be deemed to be one-half (1/2) of the parameter PQL.

(C) All sample values that are above the PQL shall be the reported values.

(2) **Criteria equal to or below PQL.**

(A) If sample values are below the PQL for a criterion which is less than one-half (1/2) of the PQL, then the values shall be deemed to be zero (0) until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as zero (0) until the next test result appears above the PQL.

(B) For those parameters whose criteria are at least two (2) orders of magnitude below the PQL, evidence considered with respect to assessment of use support shall include fish tissue analysis, biological community analysis, biological thresholds wherever available, or other holistic indicators which are appropriate for the beneficial use in question.

(C) If sample values are below the PQL for a criterion which is greater than or equal to one-half (1/2) of the PQL but less than the PQL, then the values shall be deemed to be one-half (1/2) of the criterion value until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as equal to one-half (1/2) of the criterion value until the next test result appears above the PQL.

(D) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is below the PQL, then such value shall be deemed to be one-half (1/2) of the criterion value.

(E) All sample values that are above the PQL shall be the reported values.

(f) **Magnitude of criteria exceedance.**

# Permanent Final Adoptions

- (1) **General.** The magnitude of exceedance, as well as frequency of exceedances, shall be used in determining beneficial use support. Samples shall be taken only during conditions when criteria apply.
- (2) **Toxicants.** If two or more concentrations of toxicants exceed criteria or screening levels to protect human health or aquatic life by two orders of magnitude or more, the associated beneficial use shall be deemed to be not supported.
- (3) **Dissolved oxygen.** If more than two concentrations of DO in a stream are observed to be below 2 mg/L in any given year, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.
- (4) **Other parameters.** The magnitude and frequency of exceedances to be used for determining beneficial use support for parameters other than toxicants and DO shall be as prescribed in the rules elsewhere in this Subchapter.
- (g) **Quality assurance.** On and after July 1, 2002, data collected for purposes of use support assessment shall be collected using documented programmatic quality assurance and quality control methods substantially in accordance with those required by "EPA Requirements for Quality Assurance Project Plans", EPA publication no. EPA/240/B-01/003 (March 2001). The sampling and testing methods used shall protect the integrity of the sample and provide detailed documentation of analysis.

[OAR Docket #19-575; filed 6-7-19]

## TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #19-576]

### RULEMAKING ACTION: PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions  
785:50-1-4. Application of rules [AMENDED]
- Subchapter 5. Applications for Financial Assistance  
785:50-5-1. Application form and required information [AMENDED]
- Subchapter 6. Water and Sewer Program Emergency Grants Requirements and Procedures  
785:50-6-1. Approval criteria [AMENDED]  
785:50-6-3. Emergency grant priority point system [AMENDED]
- Subchapter 7. Water and Sewer Program (State Loan Program Revenue Bond) Requirements and Procedures  
785:50-7-2. Approval criteria [AMENDED]
- Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures  
785:50-8-3. Application review and disposition [AMENDED]  
785:50-8-5. REAP grant priority point system [AMENDED]
- Subchapter 9. Clean Water State Revolving Fund Regulations  
Part 3. General Program Requirements  
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]  
Part 7. SRF Environmental Review Process  
785:50-9-60. Requirement of environmental review [AMENDED]

### AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51 et seq.; 62 O.S. § 2003.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 6, 2018

### COMMENT PERIOD:

December 3, 2018 through January 15, 2019

### PUBLIC HEARING:

January 15, 2019

### ADOPTION:

February 19, 2019

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 22, 2019

### LEGISLATIVE APPROVAL:

Approved May 28, 2019 by HRJ 1022

### FINAL ADOPTION:

May 28, 2019

### EFFECTIVE:

August 11, 2019

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Section 785:50-1-4 was amended to add language that allows the program to waive certain requirements for communities that have been declared to be in a state of emergency by the federal or state government. The intended effect is to allow the financial programs administered by the OWRB to be more efficient and effective in times of a declared emergency.

Sections 785:50-5-1, 785:50-6-1, 785:50-7-2, and 785:50-8-3 were amended to update and correct language to reflect current procedure. The intended effect is to make the rules more cohesive.

Section 785:50-6-3 was amended to remove Emergency Category #3. The intended effect is to remove language that is superfluous and to make the rules easier for applicants to understand.

Section 785:50-8-5 was amended to add sustainability in the points system for REAP Grants. The intended effect is to add points for communities that are making long term planning for their water and wastewater systems.

Sections 785:50-9-23 and 785:50-9-60 was amended to update language to reflect current Federal Law. The intended effect is to clarify and make the language easily understood for applicants while complying with Federal and State Law.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE  
DATE OF AUGUST 11, 2019:**

## SUBCHAPTER 1. GENERAL PROVISION PROVISIONS

### 785:50-1-4. Application of rules

Due to the very specialized nature of the financial assistance program the rules provided in this Chapter shall in all instances be subject to and given a liberal, reasonable, fair and impartial construction, interpretation and application to the end that the intent and purposes hereof may be obtained in compliance with the laws of the State of Oklahoma and the public purposes sought to be served thereby. If an emergency is declared by the federal or state government, Board Staff may waive some requirements as allowed under federal law, state law, and/or EPA regulations for applicants affected by the declared emergency.

**SUBCHAPTER 5. APPLICATIONS FOR FINANCIAL ASSISTANCE**

**785:50-5-1. Application form and required information**

(a) **Application form.**

- (1) Printed financial assistance application forms for the Water and Sewer program shall be, to the extent deemed appropriate, furnished by the Board.
- (2) Printed financial assistance application forms for the CWSRF program authorized in 82 O.S., §§1085.51 through 1085.65 shall be developed by the Board and furnished to applicants to be completed by the applicants and submitted to the Board.
- (3) Printed financial assistance application forms for the DWSRF program authorized in 82 O.S. §§1085.71 through 1085.84 shall be developed by the Board and furnished to Department and applicants to be completed by the applicants and submitted to the Board.
- (4) Printed financial assistance application forms for the Rural Economic Action Plan grant program shall be developed by the Board and furnished to qualified entities and COGs to be completed by the qualified entities or COGs and submitted to the Board.
- (5) All applications for financial assistance must be completed by the applicant either on written forms as may be provided by the Board or in such other written form as the Board may require.

(b) **Required general information.** The following general information must be submitted by applicant within each application for financial assistance unless deemed inapplicable and waived by the Board Staff:

- (1) Applicant's full, true and correct legal name, official residence and mailing address if different from official residence.
- (2) Authority of law under which applicant was created and established and applicant's independent legal authority under which application is made. Applicant must identify and describe the nature of its legal identification as a political subdivision, special purpose district or public trust.
- (3) Applicant must provide certified copy of the resolution or other specific authorizing instrument reflecting applicant's authorization for making the subject application to the Board.
- (4) Name and address of applicant's project engineer.
- (5) Total amount of funds requested by applicant for project assistance from the Board including a statement of the specific uses and purposes for which such funds are intended to be applied.
- (6) Applicant's anticipated project commencement and completion date.
- (7) Applicant's firm estimate of annual (or other interval) revenues to be derived from the project or other available sources or revenue to be pledged by applicant to the Board for loan repayment and such additional project revenue information as may be necessary to evaluate general economic feasibility of the project.

(8) Information regarding the ability of the applicant to finance project development for which assistance is sought without Board participation.

(9) A statement of the manner and means by which applicant intends to finance the entire project including a statement when appropriate of the specific manner and means by which applicant proposes to make repayment to the Board from project revenues.

(10) Information reflecting whether applicant has any type of reserve or contingency funds available which could and would be used to meet actual project costs which may exceed applicant's original total estimated costs of the project (reserve or contingency fund for cost overrun). Such information should include the nature, source, amount and liquidity of such reserve or contingency funds and applicant's commitment and ability to utilize such funds when and if necessary for such purposes.

(11) A certified copy of applicant's previous four (4) years' annual audits, if available, and a statement of applicant's financial condition including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt which such indebtedness might affect applicant's overall financial condition. In this connection, applicant must list the security given for all such indebtedness.

(12) A brief but adequate description of the proposed project for which application is made, including but not limited to the following:

- (A) Project location.
- (B) Nature of project, including a detailed project description with such tentative project plans and specifications as may be necessary to reflect general engineering feasibility of the project.
- (C) Comprehensive statement clearly demonstrating project need ~~and the degree and extent of local support for the project.~~
  - (i) Such statement must be in sufficient detail to support and justify the project and should describe ~~all aspects of present local support and approval for the project.~~
  - (ii) Applicant may include letters or statement of support from any interested persons or agencies.
- (D) Anticipated total project cost.
- (E) Listing of all financing institutions, lender, or other funding sources participating in financing the project, with, where applicable, the following related information:
  - (i) Statement by each participating entity reflecting the relative interest, support and commitment of the participating lender or other funding source in and to the project.
  - (ii) Statement reflecting total project cost allocation between lenders or other funding sources, and,
  - (iii) A statement and description of all project security or project revenues already pledged or to

be pledged to other participating lenders or fund sources.

(13) Nature and amount of security to be pledged to the Board for the financial assistance requested.

(14) If real or personal property, or any interest therein, is to be pledged by applicant to the Board for security, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property. If applicant is not the owner of such real or personal property to be pledged, applicant must state and describe the nature and extent of applicant's legal or equitable interest in such property, and, provide a statement setting forth who or what entity owns such property with a statement of all outstanding liabilities or indebtedness against such property.

(15) Description of nature and division of contemplated project ownership or other legal or equitable interest in the project if other than complete ownership by applicant.

(16) A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for project commencement, completion and cooperation. This requirement includes but is not limited to all necessary legal rights including water rights, licenses or permits, whether existing under federal, state or local law or regulation, the relative status of secured or outstanding contracting arrangements, and the status of any incidental legal proceedings including, but not limited to any authorizations required by residents of the applicant.

(17) All applicants should submit, if not otherwise submitted, a comprehensive statement of project overview setting forth group effort in the project, debt, revenue and commitments the project and applicant's future capital improvement plans as may relate to the applicant's proposed project or the applicant generally.

(18) Where applicable to the particular project for which financial assistance is sought, the following additional information must be submitted with the application:

(A) All estimated firm annual yields and proposed reservoir capacities for storage if assistance is sought for reservoir or storage facilities construction or if assistance is sought for a project incidental to an existing storage facility or reservoir.

(B) A statement containing the proposed purposes for which water will be stored or used and places of use or potential use for such water.

(C) A statement of relative allocation of project costs to each project purpose if for more than one purpose.

(D) A brief description of existing or proposed improvements in the project area and a description of all such improvements which may require relocation.

(19) The Board may require applicant to submit such further or additional project information as may be deemed necessary for proper project review under the particular facts and circumstances of any specific project financial assistance proposal.

## SUBCHAPTER 6. WATER AND SEWER PROGRAM EMERGENCY GRANTS REQUIREMENTS AND PROCEDURES

### 785:50-6-1. Approval criteria

(a) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the emergency grant program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants. ~~The Board shall also consider the extent and degree of local support, interest and commitment in and to the proposed project.~~

(4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite for approval and funding that it is cost effective.

(7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) **Criteria applicability.**

(1) The general criteria set forth in (a) and (c) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed appropriate for strict application and interpretation nor shall such criteria be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (a) and (c) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(c) **Criteria for denying an application.** The Board may deny an application for an emergency grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(2) The applicant has had improper or unsound management in the past.

(3) The project is not cost effective.

(4) Any other reason based upon applicable law, applicable requirements of the pertinent bond resolution governing use of the bond proceeds, or the Board's judgment and discretion.

**785:50-6-3. Emergency grant priority point system**

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is one hundred twenty (120). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:

(A) The emergency situation of the applicant.

(B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects; therefore,

eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

(b) **Priority formula for eligible entities other than school districts.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $PE + WR + I + L + MHI + FP + AR + BP - AN$ , where:

(A) P = Priority ranking

(B) E = Emergency ranking

(C) WR = Water and sewer rate ~~structure~~

(D) I = Indebtedness per customer

(E) L = Amount of local contribution toward project

(F) MHI = Median Household Income

(G) FP = Applicant's ability to finance project

(H) AR = Amount of grant requested

(I) BP = Benefit of project to other systems

(J) AN = Application number

(2) **Explanation.** Each of these criteria are explained below:

(A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and ~~Category 3~~ Category 2 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of ~~30~~ 40 points for ~~Category 3~~ Category 2. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The ~~three (3)~~ two (2) emergency ranking categories are as follows:

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources

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or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provisions of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make

the extension feasible, is achieved. Category 2 emergencies receive 40 points.

~~(iii) **Category 3.** Water system improvements needed to meet the average and/or maximum daily demands of a system's customers caused by a large increase in the number of customers. The increase could result from annexation or the sale of treated water to another entity(ies) based on an engineering study that indicates purchasing to be the most cost effective alternative. Also included under this category is the construction of a new or extended water or sewer system to serve areas where residents are without sewer system service or without water. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 3 emergencies receive 30 points.~~

(B) **Water and sewer rate structure (WR).**

(i) **For systems providing water service only:**

- (I) If the cost per 5000 gallons is \$50.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.
- (III) If the cost per 5000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.
- (IV) If the cost per 5000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.
- (V) If the cost per 5000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.
- (VI) If the cost per 5000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.
- (VII) If the cost per 5000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.
- (IX) If the cost per 5000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.
- (X) If the cost per 5000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.
- (XI) If the cost per 5000 gallons is less than \$18.00, the applicant shall be given 0 points.

(ii) **For systems providing water and sewer services:**

- (I) If the cost per 5000 gallons is \$56.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.

- (III) If the cost per 5000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points
  - (IV) If the cost per 5000 gallons \$45.00 to \$48.99, the applicant shall be given 7 points.
  - (V) If the cost per 5000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
  - (VI) If the cost per 5000 is \$37.00 to \$40.99, the applicant shall be given 5 points.
  - (VII) If the cost per 5000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
  - (VIII) If the cost per 5000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
  - (IX) If the cost per 5000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.
  - (X) If the cost per 5000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.
  - (XI) If the cost per 5000 gallons is less than \$30.00, the applicant shall be given 0 points.
- (iii) **For systems providing sewer service only:**
- (I) If the cost per connection per month is \$34.00 or greater, the applicant shall be given 10 points.
  - (II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.
  - (III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.
  - (IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.
  - (V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.
  - (VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.
  - (VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.
  - (VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.
  - (IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.
  - (X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.
  - (XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.
- (iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing

block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.

- (C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.
- (i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.
  - (ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points
  - (iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.
  - (iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.
  - (v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.
  - (vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.
  - (vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.
  - (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.
  - (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.
  - (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.
  - (xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.
- (D) **Local participation (L).**
- (i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.
  - (ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:
    - (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
    - (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
    - (III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.

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- (IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.
- (V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.
- (VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.
- (VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.
- (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.
- (IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.
- (X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.
- (XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.
- (E) **Median Household Income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available.
- (i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.
- (ii) Points are awarded as follows:
- (I) If the median household income is less than \$17,000, the applicant shall be given 10 points.
- (II) If the median household income is \$17,000 to \$20,999, the applicant shall be given 9 points.
- (III) If the median household income is \$21,000 to \$23,999, the applicant shall be given 8 points.
- (IV) If the median household income is \$24,000 to \$28,999, the applicant shall be given 7 points.
- (V) If the median household income is \$29,000 to \$31,999, the applicant shall be given 6 points.
- (VI) If the median household income is \$32,000 to \$36,999, the applicant shall be given 5 points.
- (VII) If the median household income is \$37,000 to \$39,999, the applicant shall be given 4 points.
- (VIII) If the median household income is \$40,000 to \$44,999, the applicant shall be given 3 points.
- (IX) If the median household income is \$45,000 to \$47,999, the applicant shall be given 2 points.
- (X) If the median household income is \$48,000 to \$51,999, the applicant shall be given 1 point.
- (XI) If the median household income is \$52,000 or greater, the applicant shall be given 0 points.
- (F) **Ability to finance project (FP).**
- (i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.
- (ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.0710), divided by the product of (12) multiplied by (C), where:
- (I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.
- (II) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.
- (III) (0.0710) = Annual rate factor for a 25 year loan at 5%
- (IV) (12) = Number of months per year.
- (V) (C) = Number of customers
- (iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.
- (iv) Points in the FP ranking are awarded as follows:
- (I) If the ability to finance the project is \$10.00 or greater, the applicant shall be given 12 points.
- (II) If the ability to finance the project is \$8.00 to \$9.99, the applicant shall be given 11 points.
- (III) If the ability to finance the project is \$6.00 to \$7.99, the applicant shall be given 10 points.
- (IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant shall be given 9 points.
- (V) If the ability to finance the project is \$4.00 to \$4.99, the applicant shall be given 8 points.

(VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant shall be given 7 points.

(VII) If the ability to finance the project is \$2.00 to \$2.99, the applicant shall be given 6 points.

(VIII) If the ability to finance the project is \$1.75 to \$1.99, the applicant shall be given 5 points.

(IX) If the ability to finance the project is \$1.50 to \$1.74, the applicant shall be given 4 points.

(X) If the ability to finance the project is \$1.25 to \$1.49, the applicant shall be given 3 points.

(XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant shall be given 2 points.

(XII) If the ability to finance the project is \$0.75 to \$0.99, the applicant shall be given 1 point.

(XIII) If the ability to finance the project is less than \$0.75, the applicant shall be given 0 points.

**(G) Amount of grant requested (AR).**

(i) Points under this category for amount of grant requested are distributed as follows:

- (I) \$95,001 to \$100,000: -5
- (II) \$90,001 to \$95,000: -4
- (III) \$85,001 to \$90,000: -3
- (IV) \$80,001 to \$85,000: -2
- (V) \$75,001 to \$80,000: -1
- (VI) \$70,001 to \$75,000: 0
- (VII) \$65,001 to \$70,000: +1
- (VIII) \$60,001 to \$65,000: +2
- (IX) \$55,001 to \$60,000: +3
- (X) \$50,001 to \$55,000: +4
- (XI) \$45,001 to \$50,000: +5
- (XII) \$40,001 to \$45,000: +6
- (XIII) \$35,001 to \$40,000: +7
- (XIV) \$30,001 to \$35,000: +8
- (XV) \$25,001 to \$30,000: +9
- (XVI) \$25,000 or less: +10

(ii) If a project exceeds \$75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

**(H) Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

**(I) Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval,

points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funded 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

- (i) 1 prior grant = 5 reduction points
- (ii) 2 prior grants = 8 reduction points
- (iii) 3 prior grants = 10 reduction points
- (iv) 4 prior grants = 12 reduction points
- (v) 5 or more prior grants = 14 reduction points

**(c) Priority formula for school districts.**

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

- (A) The emergency situation of the school district.
- (B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 30 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given a maximum of 66 points and is derived by analyzing the following:

- (A) Local tax levies
- (B) Bonded indebtedness
- (C) Local contribution
- (D) Median household income within the school district's geographical area
- (E) Applicant's ability to finance project
- (F) Amount of grant requested
- (G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications:  $P = E + LT + BI + L + MHI + FP + AR - AN$ , where:

- (A) P = Priority ranking total points
- (B) E = Emergency ranking
- (C) LT = Local tax levies
- (D) BI = Bonded indebtedness
- (E) L = School's contribution toward the project
- (F) MHI = Median household income of population within a school district
- (G) FP = Applicant's ability to finance project
- (H) AR = Amount of grant requested

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- (I) AN = Application number
- (8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) 95 to 100.00 mills = 13 points
- (ii) 90 to 94.99 mills = 11 points
- (iii) 85 to 89.99 mills = 10 points
- (iv) 80 to 84.99 mills = 8 points
- (v) 70 to 79.99 mills = 6 points
- (vi) 60 to 69.99 mills = 4 points
- (vii) 55 to 59.99 mills = 2 points
- (viii) 50 to 54.99 mills = 1 point
- (ix) 45 to 49.99 mills = 0 points
- (x) 40 to 44.99 mills = -1 points
- (xi) Less than 40 mills = -2 points

(B) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows: Percentage of Indebtedness Points

- (I) 95% to 100% of debt limitation = 10 points
- (II) 90% to 94.99% of debt limitation = 8 points
- (III) 80% to 89.99% of debt limitation = 7 points
- (IV) 75% to 79.99% of debt limitation = 6 points
- (V) 70% to 74.99% of debt limitation = 5 points
- (VI) 65% to 69.99 of debt limitation = 4 points
- (VII) 60% to 64.99% of debt limitation = 3 points
- (VIII) 55% to 59.99% of debt limitation = 2 points
- (IX) 50% to 54.99% of debt limitation = 1 point
- (X) 45% to 49.99% of debt limitation = 0 points
- (XI) 40% to 44.99% of debt limitation = -1 point
- (XII) 30% to 39.99% of debt limitation = -2 points
- (XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

(C) **Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the

applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.

(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.

(III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

### SUBCHAPTER 7. WATER AND SEWER PROGRAM (STATE LOAN PROGRAM REVENUE BOND) REQUIREMENTS AND PROCEDURES

#### 785:50-7-2. Approval criteria

(a) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the water and sewer program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

- (1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.
  - (2) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.
  - (3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants. ~~The Board shall also consider the extent and degree of local support, interest and commitment in and to the proposed project.~~
  - (4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.
  - (5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.
  - (6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite for approval and funding that it is cost effective.
  - (7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.
  - (8) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.
- (b) **Criteria applicability.**
- (1) The general criteria set forth in (a) and (c) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.
  - (2) Such criteria shall not be deemed appropriate for strict application and interpretation nor shall such criteria be deemed exclusive.
  - (3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.
  - (4) The criteria and standards set forth in (a) and (c) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.
- (c) **Criteria for denying an application.** The Board may deny an application for a State Loan Program Revenue Bond Loan for any of the following reasons:
- (1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.
  - (2) The applicant has had improper or unsound management in the past.
  - (3) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operator and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)
  - (4) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).
  - (5) The project is not cost effective.
  - (6) Any other reason based upon applicable law, applicable requirements of the pertinent bond resolution governing use of the bond proceeds, or the Board's judgment and discretion.

**SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES**

**785:50-8-3. Application review and disposition**

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the REAP grant program shall be as follows:

- (1) **Pre-application conference.**
  - (A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre- application conference between Board staff, applicant (or representative), applicant's legal, financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.
  - (B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.
- (2) **Application.**

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- (A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion, may be submitted by a COG for the benefit or on behalf of a qualified entity. A COG may assist a qualified entity in filling out or filing an application, but a COG may not exercise any power of review, approval or disapproval over an application. All applications filed with any COG shall be submitted by the COG to the Board. If an application submitted by a COG is approved, the money shall be disbursed directly to the qualified entity.
- (B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.
- (C) All applicants must have the verification form signed and notarized by the applicant representative, and must have a signature of an attorney representing applicant.
- (3) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.
- (b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the REAP grant program, the Board shall follow the priority point system set forth in 785:50-8-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:
- (1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.
  - (2) **Eligibility.** The applicant must be a qualified entity (or a COG applying on behalf of a qualified entity) and the proposed project must be for a qualified purpose as defined in 785:50-3-1 or 785:50-8-2.
  - (3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants. ~~The Board shall also consider the extent and degree of local support, interest and commitment in and to the proposed project.~~
  - (4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.
  - (5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole.
  - (6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite to application approval and funding that the project is cost effective.
  - (7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.
  - (8) **REAP grant amount; availability of funds.** In sizing a REAP grant, the Board shall take into consideration the current and anticipated availability of REAP program funds.
  - (9) **Conservation Measures.** The Board shall consider whether or not the applicant has taken all reasonable measures to limit waste and conserve water.
- (c) **Criteria applicability.**
- (1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.
  - (2) Such criteria shall not be deemed exclusive.
  - (3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.
  - (4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.
- (d) **Criteria for denying an application.** The Board may deny an application for a REAP grant for any of the following reasons:
- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.
  - (2) Any other reason based upon applicable law or the Board's judgment and discretion.
- (e) **Board action.**
- (1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:
    - (A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.
    - (B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.
    - (C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

**785:50-8-5. REAP grant priority point system**

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is ~~one hundred fifteen (115)~~ one hundred twenty-five (125). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority points. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the Census Population than for any jurisdiction with a greater population; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities [62:2003].* In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate

applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $T = P + WR + I + MHI + FP + N + AR + BP + PG + S$ , Where:

- (A) T = Total of priority points
- (B) P = Population
- (C) WR = Water and sewer rate structure
- (D) I = Indebtedness per customer
- (E) MHI = Median household income
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) BP = Project benefit to other systems
- (J) PG = Previous grant assistance
- (K) S = Sustainability

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest Census Population shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

- (i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).
- (ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).
- (iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

- (i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.

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- (ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points
  - (iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.
  - (iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.
  - (v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.
  - (vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.
  - (vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.
  - (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.
  - (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.
  - (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.
  - (xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.
- (D) **Median household income (MHI).** The median household income is calculated according to the most current United States Decennial Census or American Community Survey data available.
- (i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.
  - (ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).
- (E) **Ability to finance project (FP).**
- (i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.
  - (ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula:  $FP = AR (0.0710)/(12)(C)$ , Where:
    - (I)  $FP$  = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.
    - (II)  $AR$  = Amount of grant requested.
    - (III)  $0.0710$  = Annual rate factor for a 25 year loan at 5%.
    - (IV)  $12$  = Number of months per year.
    - (V)  $C$  = Number of customers.
  - (iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.
  - (iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:
    - (I) If the FP is \$10.00 or greater, the applicant shall be given 12 points.
    - (II) If the FP is \$8.00 to \$9.99, the applicant shall be given 11 points.
    - (III) If the FP is \$6.00 to \$7.99, the applicant shall be given 10 points.
    - (IV) If the FP is \$5.00 to \$5.99, the applicant shall be given 9 points.
    - (V) If the FP is \$4.00 to \$4.99, the applicant shall be given 8 points.
    - (VI) If the FP is \$3.00 to \$3.99, the applicant shall be given 7 points.
    - (VII) If the FP is \$2.00 to \$2.99, the applicant shall be given 6 points.
    - (VIII) If the FP is \$1.75 to \$1.99, the applicant shall be given 5 points.
    - (IX) If the FP is \$1.50 to \$1.74, the applicant shall be given 4 points.
    - (X) If the FP is \$1.25 to \$1.49, the applicant shall be given 3 points.
    - (XI) If the FP is \$1.00 to \$1.24, the applicant shall be given 2 points.
    - (XII) If the FP is \$0.75 to \$0.99, the applicant shall be given 1 point.
    - (XIII) If the FP is less than \$0.75, the applicant shall be given 0 points.
- (F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.
- (G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:
  - (i) If the AR is \$140,001 to \$150,000, the applicant shall be given -5 points.
  - (ii) If the AR is \$130,001 to \$140,000, the applicant shall be given -4 points.
  - (iii) If the AR is \$120,001 to \$130,000, the applicant shall be given -3 points.
  - (iv) If the AR is \$110,001 to \$120,000, the applicant shall be given -2 points.
  - (v) If the AR is \$100,001 to \$110,000, the applicant shall be given -1 point.
  - (vi) If the AR is \$100,000, the applicant shall be given 0 points.
  - (vii) If the AR is \$80,000 to \$99,999, the applicant shall be given 1 point.
  - (viii) If the AR is \$60,000 to \$79,999, the applicant shall be given 2 points.
  - (ix) If the AR is \$40,000 to \$59,999, the applicant shall be given 3 points.

(x) If the AR is \$20,000 to \$39,999, the applicant shall be given 5 points.

(xi) Any portion of an AR that is more than \$150,000 shall be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than \$150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply, provided points shall not be deducted from any such REAP grant which was funded 10 or more years prior to the date of Board action on the pending application, and has been subject to Board audit:

(i) If the qualified entity has received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.

(ii) If the qualified entity has received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given -10 points for each REAP grant so received.

(iii) If the qualified entity has received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.

(iv) If the qualified entity has received two (2) REAP grants more than twelve (12) months in the past, the application will be given -8 points.

(v) If the qualified entity has received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.

(vi) If the qualified entity has received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.

(vii) If the qualified entity has received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(J) **Sustainability.** Points will be awarded for an applicant's sustainability and long range planning as follows:

(i) Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 10 points

(ii) Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 6 points

(iii) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff shall be awarded 3 points

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts:  $T = ADM + LT + BI + MHI + FP + N + AR + PG$ , Where:

(A) T = Total of priority points

(B) ADM = Average daily membership

(C) Lt = Local tax levies

(D) BI = Bonded indebtedness

(E) MHI = Median household income of population within the school district or area of county to be served

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100; the applicant shall be given 13 points.

(ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

(iii) If the mills are 85 to 89.99, the applicant shall be given 10 points.

(iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.

(v) If the mills are 70 to 79.99, the applicant shall be given 6 points.

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- (vi) If the mills are 60 to \$69.99, the applicant shall be given 4 points.
  - (vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.
  - (viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.
  - (ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.
  - (x) If the mills are 40 to 44.99, the applicant shall be given -1 point.
  - (xi) If the mills are less than 40, the applicant shall be given -2 points.
- (C) **Bonded indebtedness (BI).**
- (i) Priority points for Bonded Indebtedness are as follows:
    - (I) If the percentage is 95% to 100%, the applicant shall be given 10 points.
    - (II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.
    - (III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.
    - (IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.
    - (V) If the percentage is 70% to 74.99%, the applicant shall be given 5 points.
    - (VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.
    - (VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.
    - (VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.
    - (IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.
    - (X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.
    - (XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.
    - (XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.
    - (XIII) If the percentage is less than 30%, the applicant shall be given -3 points.
  - (ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

### SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

#### PART 3. GENERAL PROGRAM REQUIREMENTS

#### **785:50-9-23. Clean Water SRF Project Priority System**

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall ensure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attendees of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, Brownfield activities, and stormwater activities, based on the relative impact of the project in achieving the water quality objectives of the Clean Water Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL, storm water management program, water audit or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River, Culturally Significant Water or Nutrient Limited Watershed;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent ~~208~~ Water Quality Management Plan, i.e. federal decennial census or American Community Survey data available, the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects

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that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallocation or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The Programmatic Application must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the Programmatic Application. If it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

(i) Submit a certification from the Department that the project is a Brownfield project;

(ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and

(iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source and Watershed Management activities.** Requests received for nonpoint source and watershed management projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements

## PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

### 785:50-9-60. Requirement of environmental review

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public,

private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FONSI) based upon a formal environmental review supported by an environmental information assessment (EA); and a determination to provide or not to provide financial assistance based upon a Record of Decision (ROD) following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment. Documentation required in this subsection will be submitted to the Board.

(i) Applicants seeking a categorical exclusion will provide the Board with sufficient documentation to demonstrate compliance with the criteria of this Chapter and shall satisfy the provisions of 40 C.F.R. Section 6.204. At a minimum, this will consist of:

- (I) a brief, complete description of the proposed project and its costs;
- (II) statement identifying the categorical exclusion that applies to the action;
- (III) a statement explaining why no extraordinary circumstances apply to the proposed action; and
- (IV) a plan map or maps of the proposed project showing the location of all construction areas, the planning area boundaries, and any known environmentally sensitive areas.

(ii) A proposed project can be categorically excluded from a full environmental review if the proposed project:

- (I) fits within the category of action that is eligible for exclusion,
- (II) will not result in significant impacts on the quality of the human environment; and
- (III) does not involve extraordinary circumstances, as listed in 40 CRF Section 6.204.

(iii) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(iv) The Board may exclude, by amendment to these regulations, other categories of projects for

which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FONSI will be based upon an environmental review by the staff supported by an Environmental Information Document (EID) prepared by the applicant in conformance with 785:50-9-61 and 40 CFR 6.206. Upon review of the EID the staff will issue either a FONSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for a categorical exclusion will be required to prepare an EID. The Board's issuance of a FONSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61 and 40 CFR 6.208. A ROD results from an extensive environmental review of a proposed project's potential environmental impacts as detailed in an EIS.

(2) **Other determinations of the Board.**

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

- (i) reaffirm the original determination through the issuance of a public notice or statement of finding;
- (ii) issue a FONSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;
- (iii) issue an amendment to a FONSI, or revoke a FONSI and issue a public notice that the preparation of an EIS will be required, or
- (iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(B) When the environmental determination is five years old or older, and for which the subject action has not yet been implemented, the Board staff must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the

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action and complete an appropriate decision document in accordance with 785:50-9-60 or reaffirm original determination.

(C) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

- (i) immediately remedy a severe public health, water quality or environmental problem;
- (ii) not preclude any reasonable alternatives identified for the complete system;
- (iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and
- (iv) not be highly controversial.

(D) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FONSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(E) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.

(3) **Projects exempt from environmental review.** The Board is not required to perform an environmental review of the following projects:

(A) Non-treatment works projects that are not defined in the Clean Water Act Section 212; and projects that are not defined as Section 212 projects.

(B) Projects that consist of design and planning fees only.

*[OAR Docket #19-576; filed 6-7-19]*

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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

1:2019-29.

### EXECUTIVE ORDER 2019-29

Upon taking office, I directed my staff to begin examining the frequency with which state agencies, boards, and commissions hire outside lobbyists to lobby the State's legislators on their behalf and the costs incurred as a result of such lobbying. In addition, I issued Executive Order 2019-02, which required state agencies, boards, and commissions to provide my office information related to the hiring of any outside lobbyists. The information provided demonstrated over \$1,000,000 of taxpayers' money was spent annually by agencies, boards, and commissions on outside lobbyists.

As stated in Executive Order 2019-02, there is a role to be played in governmental affairs for persons to lobby legislators on behalf of various interest groups. The Oklahoma Statutes recognize this role in regulating the conduct of lobbyists in Title 74 of the Oklahoma Statutes, Chapter 62 Appendix 1, Rule 5. However, as Governor of the State Oklahoma with "Supreme Executive power" to manage the Executive Branch of the government, as provided for in Section 2 of Article VI of the Oklahoma Constitution, I have determined that it is not a proper use of state funds for any state agency, board, or commission to expend taxpayers' money on the hiring of outside lobbyists to lobby the State's legislators on behalf of any state agency, board, or commission.

As a result, therefore, I, J. Kevin Stitt, Governor of the State of Oklahoma, by the authority vested in me pursuant to

Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby prohibit all "state agencies," as defined by 61 O.S. § 327(A), from entering into any new, or renewing any existing, contract or any other agreement with a Lobbyist for the purpose of Lobbying without first securing the express, written approval of the appropriate Cabinet Secretary. For purposes of this Executive Order, the terms Lobbyist and Lobbying shall have the same meanings as defined in Executive Order 2019-02.

Copies of this Executive Order shall be distributed to the chief executives of every State agency, board, and commission for immediate implementation. Copies of this Executive Order shall also be supplied to each Cabinet Secretary.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma this 5<sup>th</sup> day of July, 2019

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:  
Michael Rogers  
Secretary of State

*[OAR Docket #19-712; filed 7-5-19]*

